NOS. 17,878 & 17,879

In The

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

NO. 17,878

GEORGE RAMSEY, LEON NUNLEY, d/b/a LEON NUNLEY COAL COMPANY; PAUL GIBBS, d/b/a PAUL GIBBS COAL COMPANY; LOIS HALL TRAVIS, Administratrix of the Estate of W. J. Travis and J. H. GRAHAM, d/b/a NINTH WEST COAL COMPANY; A & R COAL COMPANY, INC.; W. T. MORRISON and J. H. GRAHAM, d/b/a M & G COAL COMPANY; J. H. GRAHAM COAL COMPANY, INC.; W. T. MORRISON and LOIS HALL TRAVIS, Administratrix of the Estate of W. J. Travis, d/b/a M & T COAL COMPANY; STEPHENSON BROTHERS COAL COMPANY, INC., EDWARD NUNLEY, d/b/a EDWARD NUNLEY COAL COMPANY; EAST VALLEY COAL COMPANY, INC.; ELLIS WARD and LON L. VARNELL, d/b/a TRACY CITY COAL COMPANY; HENRY WILLIS FLYNN, d/b/a WILLIS FLYNN COAL COMPANY; H. W. FLYNN COAL COMPANY, INC.; HOWARD HIGGINS, d/b/a HOWARD HIGGINS COAL COMPANY; HOWARD HIGGINS COAL COMPANY, INC.; MARSHALL MEEKS,
Plaintiffs-Appellants,

vs.

UNITED MINE WORKERS OF AMERICA,
Defendant-Appellee.

NO. 17,879

TENNESSEE PRODUCTS AND CHEMICAL CORPORATION,
Plaintiff-Appellant,

vs.

UNITED MINE WORKERS OF AMERICA,
Defendant-Appellee.

Appeals from Final Judgments of the United States District Court, Eastern District of Tennessee, Southern Division

APPENDIX FOR PLAINTIFFS-APPELLANTS
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TENNESSEE LAW PRINTERS, P. O. Box 277, Knoxville, Tennessee, Phone 525-4302

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[1945] MR. ROWNTREE: Page 958. This is a government report which we seek to put in with that stipulation regarding government publications. This is a document prepared by the Research and Statistics Section, Tennessee Department of Employment Security, Donald M. McSween, Commissioner, Nashville, Tennessee, June 10, 1957, entitled "A Brief Report on Employment and Unemployment in the Coal Mining Industry of Tennessee."

* * *

[1950] (The report referred to above was marked P144 and received in evidence.)

MR. ROWNTREE: "One. Introduction:

"This is a brief report on the unemployment situation in the bituminous coal mining industry of Tennessee. Sharp increases in unemployment in Grundy and Marion Counties in recent weeks have focused the attention of governmental agencies and the public upon the plight of unemployed coal miners and their families in these two areas. Since extensive unemployment has been a prevailing characteristic of all coal producing areas in the state, this review will examine the unemployment problem throughout the industry as well as for Grundy and Marion Counties.

"The Tennessee Department of Employment Security is very much aware of the extent of unemployment in this industry since most unemployed miners file claims promptly for unemployment insurance when they lose their jobs. The records of the agency have been utilized to prepare this report.

"Current unemployment in the coal industry.

"Data have been brought together in Table I showing

unemployment levels in the important coal producing counties of the state for May 1957 and for the same month a year ago.

[1951] "Table I. Unemployment in the coal mining industry in selected counties of Tennessee for May 1957 and May 1956.

Grundy County: May, 1957, 550; May, 1956, 114." These are unemployed miners.

MR. COMBS: What page are you reading from?

MR. ROWNTREE: This is page one.

"Marion County: May 1957, 216; May 1956, 35.

"Sequatchie County in May 1957, 96; May 1956, 15.

"Anderson County, May, 1957, 600; May 1956, 500.

"Campbell County: May 1957, 1,100; May 1956, 900.

"Claiborne County: May 1957, 700; May 1956, 600.

"The data in Table I shows that over two-thirds of the total unemployment is located in the Campbell-Claiborne-Anderson County area. Furthermore, where there has been a slight increase in unemployment in this area in the past 12 months, the unemployment level was very high a year ago. The data presented later on in this study will show that a large volume of unemployment has existed in this area for the past five years.

"On the otherhand, the Grundy-Marion-Sequatchie area, with about 25 per cent of the total current unemployment, has had a very sharp increase in the number of unemployed since a year ago—about 700.

[1952] "One would be tempted to conclude from these figures on unemployment that the coal mining industry is a dying one in Tennessee. That is not so, however, as the discussion in Section 3 will indicate.

"Coal production in Tennessee has doubled since 1950.

"Bituminous coal is mined in 20 counties of the state, located in the Appalachian Mountain system and extended

in a broad band northeast and southwest as a continuation of the West Virginia and Kentucky coal fields. It varies in quality from excellent to poorer grades and is found in folded strata or seams in deep mines in some areas and in level strata nearer the surface in other areas. The latter areas have been found susceptible of strip and mechanical mining in many cases, the development of which has contributed greatly to expanded production in recent years.

"Coal has been mined in commercial quantities in Tennessee for over a hundred years. By 1860, 165,000 tons were mined annually. By 1920, this had increased to 7,000,000 tons a year with a value that year of $29,000.00. In 1960, 6,000,000 tons were mined with a value of about $12,000,000. Table II shows the tonnage produced for the period 1950-1956."

* * *

[1957] MR. ROWNTREE: That's correct. We have already covered that, so we go to 990. This is a United Mine Workers Journal, page 13 of the issue of July 15, 1954, headed "List of Awards, Coal Invitation to Bid—Requisition 17/808325."

We will introduce that as the next exhibit.

(The article referred to above was marked P146 and received in evidence.)

MR. ROWNTREE: I think we will take that up later. We will skip over that at this time.

The next is a UMW Journal, page 8 of the issue of July 15, 1957. This occurs on page 995.

We offer that as the next exhibit.

[1958] (The article referred to above was marked P147 and received in evidence.)

MR. ROWNTREE: I will read this one. It is an article from the Journal's editorial page entitled "A Plea to Congress for Help. UMWA Local No. 3295, Jellico, Tennessee, recently wrote to President John L. Lewis asking his help in getting action in Congress on legislation to aid depressed area. We think the members of Congress ought to know what the officers and members of Local Union 3295 have to say on this vital subject, so we are reprinting the letter herewith."

The letter is addressed to Mr. John L. Lewis.

"Local Union No. 3295, Jellico, Tennessee, is asking you for your influence, individual, financial and as president of the United Mine Workers of America to help to secure employment in Campbell County, Tennessee, and Whitley County, Kentucky—as there are members in both counties in our local.

"Campbell County has about 2,200 miners out of work. A large part of this number have received all their unemployment benefits. Whitley County is in about the same condition.

"The only employment in the above-named counties is in dog holes and strip mines with a small per cent paying contract price. When a man who belongs to the United Mine Workers starts looking for a job here he is just like a man without a country.

[1959] "The U. S. Bureau of Mines states there is as much coal in this section as has been mined. But we think the small companies have not got the capital to mine it because they are not doing it.

"There have been a few small manufacturers talked of moving here. But they ask the citizens to finance the manufacture, and there is not enough capital in the hands of the working people.

"But we, as members of the UMW of A need work for

our families and ourselves. We do not want to lose our membership in the UMW of A. We have struggled to hold our union."

* * *

[2079] MR. ROWNTREE: We offer as the next exhibit UMWA Journal, Page 11, of the issue of May 11, 1955.

MR. COMBS: Would counsel state what it is?

MR. ROWNTREE: The caption of that article is "Moses describes BCOA relations with UMW."

[2080] MR. COMBS: Now, the reason I asked counsel to do that, your Honor, some of these have two or three different subject matters on them and I think it would be better for the Court if counsel identified the particular subject matter that he has in mind.

THE COURT: Exhibit 157.

(The Journal page referred to above was marked P157 and received in evidence.)

MR. ROWNTREE: The next exhibit is from the UMW Journal, Pages 3 and 14 of the issue of April 15, 1955. Caption of article is "TVA 'Thumbs Its Nose' at Mitchell."

MR. COMBS: We don't object to the authenticity of the exhibit but we certainly object to the materiality.

MR. ROWNTREE: The next exhibit——

MR. COMBS: (Interposing) I think we get back in Walsh-Healy on that objection.

MR. ROWNTREE: No, this is the one where I might state the substance of that one is that after that 1955 contract——

THE COURT: (Interposing) Nose thumbing is not considered a form of lobbying?

MR. ROWNTREE: No, sir, definitely not. This was

a contract that Whitwell Coal Company, a subsidiary of Tennessee Consolidated Coal Company, obtained with TVA, awarded at the Colbert Steam Plant in early 1955 for the Pocket Mines, truck mines. This article
[2081] appeared shortly after criticizing this action and disparaging the talking about truck mines and shortly after that UMW commenced to enforce the National Bituminous Coal Wage Agreement in our field on the truck mines with respect to the welfare, the withholding authorizations were insisted on that long strike there in '55.

MR. COMBS: Of course, we would refer to the whole subject but I think the gist of it, your Honor, is that Mr. Lewis was trying to get TVA to mix in with a fight, that's about what it amounted to.

MR. ROWNTREE: This was not a solicitation of the TVA, the solicitation of UMWA membership to whom the article was sent.

MR. COMBS: That TVA remark, though, about snubbing the nose to Mitchell, though, is what I had reference to.

MR. ROWNTREE: Yes, sir.

(The Journal pages referred to above were marked P158 and received in evidence.)

MR. ROWNTREE: Yes, sir, the next exhibit is page 12 of the UMW Journal of November 1, 1953, entitled "A Salute to 600 Valiant Men of District 19 in Tennessee", and we will not read from those articles at this time, but we will later refer to them in appropriate places.
[2082] THE COURT: Exhibit No. 159.

(The Journal page referred to above was marked P159 and received in evidence.)

* * *

[2100] MR. ROWNTREE: If your Honor please, we would like to read this UMW Journal article, which is Exhibit P157, being page 11 of the issue of May 1, 1955. It is entitled "Moses Describes BCOA Relations with UMW."

"Whatever the future may hold for labor-management relations in the bituminous coal industry, the story will be underlined by a 'quest for stability' according to Harry M. Moses, President, Bituminous Coal Operators' Association and chief negotiator in wage conferences with the UMWA.

"Moses' observations were made in a talk on April 15 to the College of Commerce of West Virginia University, Morgantown. The talk was entitled: 'Quest for Stability: A Goal in Sight.'

"Moses said he was not 'naive enough to believe that the country had seen its last major strike. But we have gained enough experience in our quest for stability by this time that we never again will lose sight of this goal, and eventually we may attain it without giving up any of the traditional American liberty so dear to all of us, management and labor alike.'

[2101] "Moses said the 'chaos out of which grew the current chapter of coal stability had its beginnings in the breakdown of the famous Jacksonville agreement of 1924.' That was the wage agreement that was signed by the operators with the UMWA at Jacksonville, Florida, and then a few months later abrogated by the industry. Moses said unfair competition from non-union southern coal companies were what caused the breakdown in this agreement.

"He said the early thirties saw the coal industry at low ebb 'with dog eating dog in the most vicious of price competition, and the men in the mines working for as little as $1 a day.'

"He noted that twice Congress had considered legislation to stabilize wages and prices but that it remained for the NRA of 1933 to provide a basis for such an attempt. Two successive Guffey (coal) Acts and the Wagner (labor relations) Act of 1937 carried on where the NRA left off 'and a strong union and the industry squared off for a dozen years of almost uninterrupted industrial warfare.'

"Moses described these years of 'too much heat, too little light; too much emotion, too little thought; too much government, too little private initiative.'

"All this led, he said, to a small group of operators getting together in 1949 'to do some long-range thinking' with these general conclusions: (1) 'Kleig-like' [2102] bargaining with the UMW had failed; (2) Government intervention led to settling of economic problems on a political basis; (3) Both industry and the UMWA had leadership with 'sufficient wisdom to solve their own mutual problems without making a public spectacle of their dealings or calling on a politically-minded government for help.'

"He added that on the basis of these conclusions, 'responsible segments of the industry decided to remove their collective bargaining out from under the "Kleig-like" into the realm of fact and reason.' The mechanism for this new look, he said, was the Bituminous Coal Operators Association, which he heads.

"Moses said that new mechanism is for him and president John L. Lewis, both with instructions from their members, to get right down to bargaining and bypass the old 'fruitless' joint wage conference.

"He added that the new bargaining machinery has established 'clear-cut lines of negotiating authority' and 'made possible the negotiating of national agreements with far less confusion, far less expenditure of the time and

energies of busy executives and far less undesirable publicity for the industry.'

"Another change has been the open-end contract technique instead of fixed termination dates. This avoids, he said, the necessity for both sides to feel
[2103] 'compelled to fling down the gauntlet.'

"He said the establishment of the BCOA 'has made possible swift and effective handling of national problems on an authoritative basis that has resulted in greater cooperation and understanding.'

"He added that contract disturbances are given prompt attention and matters of joint interest in legislation and other governmental action 'have received the full support of the UMWA.'

"'In a great measure,' he continued, 'the UMWA has accepted the responsibilities that properly fall upon them because during the most prosperous period of our industry they have acquired a level of wages and social benefits superior to any other industry in the world. They have joined us without reservation in all our efforts to combat the influences of competitive fuels, government interference and unreasonable safety regulations.'

"In connection with the final point, Moses noted, 'the peaceful working out of an agreement upon a reasonable, up-to-date federal mine safety code.'

"Another facet of the quest for stability was the negotiation of national seniority provisions in the wage agreement, he said.

"Moses concluded by saying that 'perfect stability is an attainable goal' and that the 'coal industry
[2104] has taken long steps in that direction.'

"He said more progress has been made in the past five years 'than I would ever have dreamed possible just a brief few years ago and I believe I can

pledge a majority of our great industry to continue the march in this direction.'"

MR. COMBS: May I comment on this just briefly? This is a speech by Harry M. Moses that was made in Morgantown, West Virginia, it doesn't say the date here, but it is in the issue of May the 1st, 1955, of the Mine Workers Journal.

Now, of course, Mr. Moses nor the BCOA are even alleged to be co-conspirators in this case here. Now, if counsel is offering this for the proof of the statements, we have no objection to this, but we don't think it is admissible for the purposes of any admissions or inferences or whatever may be drawn from it, but we have no objection to it but I just wanted to point out the type of article, it is a speech made by more or less a third party in Morgantown, West Virginia.

MR. ROWNTREE: Of course, our contention is the conspiracy is carried on through the BCOA representing the major coal companies and that this stability is the thing that they are striving for in stability of prices is at the heart of the stability of production.

I would like to read from Exhibit D135,
[2105] minutes of the UMW convention for 1960 at page 259, a speech by Mr. John Owens, Secretary-Treasurer of International Union at that convention:

"The West Kentucky Coal Company was breaking the price of coal down in every market that it could penetrate The Indiana and Illinois production was constantly being attacked by the low wage scales paid in those mines and the sales marketing policy of this non-union coal company We make no apologies. There are a billion tons of coal there. It is located in a position where it can be market upon the Ohio River and into the Tennessee Valley, which is the largest coal-consuming market there is anywhere

in the world.

"What has happened to that investment? We have got it, and all of those loans and securities and stocks and bonds are locked up in a lock box in the name of the International Executive Board, United Mine Workers of America, in the National Bank in Washington, D. C."

MR. ROWNTREE: I think that is all.

MR. COMBS: I would like to call attention of the Court that this portion read is one paragraph, a short paragraph of a speech that consisted of five-and-a-half pages and it was made in connection with the report of the secretary-treasurer of the International Union, Mr. John Owens, concerning the finances. It is a complete financial report made to the convention with their [2106] approval and the exhibit that counsel read from shows that the report of Mr. Owens, including the statement that he made, was approved unanimously without a dissenting vote by the delegates at the convention.

MR. ROWNTREE: If your Honor please, I would like to clear up the reading of Moody's Industrial Manual for Peabody and Consolidation Coal Company, which were read into the record the other day, portions of them.

The net income figures I read were net income after taxes and for the year 1959 I would just like to point out the difference in the net income before taxes and after taxes, using that year as an illustration.

With respect to Consolidation Coal Company in the year 1959 the total income before taxes, $27,763,557, from which is deducted $909,716 in interest and $6,250,000 of taxes, leaving the net income figure read the other day of $20,522,841.

With respect to Peabody Coal Company for that same year, 1959, the net income before taxes was $16,266,772, provision for federal income taxes, $4,927,000, leaving

the net after taxes of $11,339,772.

* * *

[2126] MR. ROWNTREE: I would just like to read a few extracts from that. This is a contract for the purchase and sale of coal entered into September 17th 1959, between TVA and West Kentucky Coal Company, coal to be furnished from the Pleasant View mine on a weekly base tonnage of 16,347 tons f.o.b. rail cars at Pee Vee, Kentucky.

The term of the contract, deliveries shall begin October 15, 1959, and, unless terminated by agreement, or by the terms of the contract, the contract shall continue for 15 years thereafter.

The price is $2.89 for 6-inch-by-0 size, $2.90
[2127] for 2-inch-by-0 size.

MR. COMBS: If the Court please, I think that the offer of these exhibits in connection with these bids and the pricing policies of West Kentucky that counsel has embarked upon, I am waiting to see what he was going to put on, I would like to make a statement with reference to that at this time, and a motion, if the Court would allow me.

We would like to move that the evidence not be admitted on any of the pricing activities of West Kentucky or if it is admitted that it be stricken unless the plaintiffs show that the defendant participated in those practices.

Now, we think that this participation must be shown independently of any ownership of stock that the defendants may have owned in the West Kentucky Coal Company, that there must be evidence of actual participation in those practices by the defendant before any antitrust liability can be visited in regard to predatory prices of marketing on the part of West Kentucky Coal Company or any other

alleged co-conspirators here.

We submit there is no such evidence up to this point of any participation and any evidence of predatory pricing by these companies is irrelevant as far as this defendant is concerned.

And we think the controlling standard in this case is expressed by Mr. Justice Goldberg, joined by
[2128] Mr. Justices Harlan and Stewart, in their dissenting opinion in the Pennington case at 381 U. S. 657, in which Mr. Justice Goldberg made the following statement:

"The ownership of a controlling or substantial interest in a company which conspires with others in violation of the antitrust laws does not in itself impose antitrust liability on the owner."

Citing Hartford Empire Company vs. United States, 323 U.S. 386 to 403; Buckeye Powder Company v. E. I. du Pont de Nemours Company, 223 F. 881, 885 and 886, that was a 3rd Circuit case affirmed on other grounds; Buckeye Powder Company vs. DuPont Powder Company, 248 U.S. 55; Union Pacific Coal Company vs. United States, 173 F. 737, 8th Circuit.

"Rather the owner must be shown to have participated knowingly and actively in the alleged illegal activity." See United States vs. Wise,370 U. S. 405, 416; Coronado Coal Company v. United Mine Workers,268 U. S. 295; United Mine Workers vs. Coronado Company, 259 U. S 344, 393-396.

The majority in the Pennington case did not disagree with this statement of the law, for it did not reach the question of the "sufficiency" of the evidence to which this statement of law related. The correctness of the statement we don't believe is contestable.

"A corporation is a person, within the meaning of this

[2129] Sherman Act. It is another and different person from any of its stockholders, whether they are corporation or individuals; and no corporation can, by violating a law, make any one of its stockholders who does not himself participate in that violation criminally liable therefor." We quote this Union Pacific Coal Company vs. United States, 173 F. 737 for the Eighth Circuit. "A stockholder of a corporation does not become criminally liable," and we say nor civilly liable, "for a combination made by the corporation without conscious participation therein."

In this case we feel that the maximum that the evidence will show is that the defendant had a substantial investment by way of stock purchased on the market and preferred stock in the West Kentucky Coal Company and Nashville Coal Company as its wholly-owned subsidiary, but there is no evidence that defendant participated in the activities of these corporations as far as their pricing and marketing were concerned, and absent any evidence of such participation on this alleged predatory pricing and marketing practices we think that it is not material or competent against this defendant.

We want to make that known now and our motion is to object to evidence dealing with the pricing or marketing practices of these companies or, in the alternative, to strike unless the evidence does connect the Mine Workers up in participating with them.

[2130] MR. ROWNTREE: If your Honor please, of course, Justice Goldberg was not giving the majority opinion of the Court. His language should be compared with his own language in the Grease Peddler's case, which was decided three years ago, and I can't give you the citation now, but Mr. Justice Goldberg in that case pointed out that the violation of the antitrust law was

evident in the case because the union was favoring, by its labor practices, certain peddler companies in which the union membership had ownership and I notice that he failed to cite that case or make a comparison of the language that he used in that case in his opinion in the Pennington case.

Certainly ownership alone could never, without anything more, make a stockholder guilty of a violation of the antitrust law which is participated in by the corporation that he holds stock in. We are not contending that, but we are contending that on the overall evidence in this case it is clear that the United Mine Workers was aiding this company, that this company was selling coal at a very low price to this market at a time when the UMW was seeking to keep TVA from buying coal from the local producers, particularly these truck miners in this field.

Well, one instance is the UMW Journal article on May of 1955 right after the Pocket truck mines for the local contract from TVA and the UMW Journal
[2131] took out after that contract and showed its purpose and intent with respect to who should get the coal contracts in the TVA market.

It was shortly after that that they started trying to enforce this Welfare payment provision against the truck miners here, shortly after that that they acquired Nashville Coal Company, it was shortly after that that they put up $5,200,000 to aid this West Kentucky Coal Company.

Now, we are talking about contracts here in a period of time from 1959 and 1961. These were, I suppose, the largest contracts TVA has awarded, except for the Paradise contract in Kentucky to Peabody. These are at a price of $2.90 a ton.

We see right after the '61 contract the UMW starts advancing money again and all of these things, together with the UMW's activities in this field, together

with the fact that the testimony is that they entered into a joint business enterprise with Mr. Cyrus Eaton with respect to this West Kentucky Coal Company to split the profits, if any, and Mr. Cyrus Eaton was chairman of the board of this company, and these and other facts in the record we say is the kind of proof that the plaintiff or the government in an antitrust case must rely upon because it is impossible in these conspiracy cases, in most instances, to bring into court the minutes of a meeting whereby the conspirators say, "Now you do this and I will do that and we will force these people
[2132] out of business."

That kind of proof is just not available in these kind of cases, so it is necessary to look at the course of conduct of the parties and the cases say that conduct speaks louder than words and that is the kind of case we have here.

THE COURT: Overrule the objection at this time.

* * *

[2583] **PAUL V. CALLIS,**

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROWNTREE:

Q What is your name, sir?
A Paul V. Callis
Q Where do you live, Mr. Callis?
A Nashville, Tennessee
Q How old are you?
A Forty-six

Q Are you president of Tennessee Consolidated Coal Company?

A Yes, sir.

* * *

[2646] MR. ROWNTREE: That's Exhibit 158 but it is a typed copy of that article in the Journal found in the files of Tennessee Consolidated.

* * *

[2648] MR. ROWNTREE: "The Tennessee Valley Authority—which regards its activities as above the law governing other federal agencies—has 'thumbed its nose' at Secretary of Labor James P. Mitchell and granted a $3,000,000 coal contract to a 'dog-hole' company the Labor Department placed on a 'black list' last fall for violations of both national and state mine safety standards.

"In a related matter in Colorado." I won't read that paragraph.

"Vigorous protest against the TVA action have been launched by the UMWA with the power agency, with the Secretary of Labor and other government officials and agencies."

That paragraph is not offered for the purpose of proving conspiracy but to show the purpose and character.

In the next paragraph, "In a letter to Joseph C. Swidlar, Secretary and General Counsel of TVA, vice president Thomas Kennedy of UMWA stated:

"'It is beyond human understanding to ascertain the reason why TVA would grant such a contract to
[2649] a company that has been violating all of the laws of the United States and the State of Tennessee with regard to mine safety. The only conclusion that

can be assumed for this un-American action is that TVA wants cheap coal, regardless of whether that coal is mined under sweat shop and hazardous conditions and in complete violation of the public policy of the United States. This action of TVA really places the stamp of approval on companies that violate the law and have no concern for the safety of their employees.'

"The coal company is the Whitwell Coal Corporation, Tracy City, Tennessee. An examiner for Mitchell ruled, after public hearing, that the company and associated firms were violating mine safety regulations. The examiner, E. West Parkison, found conditions in the mines 'unduly hazardous' and on September 30 recommended the company be 'black listed' and granted no more government contracts. Under the safety provisions of the Walsh-Healy Fair Standards Act, the 'black listing' of the Whitwell Company and seven other 'scab' coal firms was supposed to deny these companies the privilege of bidding on government contracts for three years.

"The rulings and interpretations of the Walsh-Healy Act were amended last fall to require that all companies, regardless of size, which supply coal to the Federal Government, abide by the Federal Mine Safety
[2650] Code or by any higher state law standards on mine safety.

"Apparently TVA has no intention of abiding by such regulations unless forced to do so by court action. It was learned by the Journal on high authority that, at the suggestion of Secretary Mitchell, Arthur Flemming, Director of the Office of Defense Mobilization, had called TVA officials to Washington recently to urge them to comply with such regulations voluntarily. The attitude of the TVA officials was reported to be that TVA is an independent agency of government and is not subject to such rules and

regulations and does not intend to abide by them unless forced to do so."

Q I ask the witness, were these mines referred to here black listed?

A No, sir.

* * *

[2651] Q Mr. Callis, was this contract, 8595-A, that was awarded to Whitwell Coal Corporation for the Pocket Mines?

A Yes, sir.

Q Where was that evaluated and awarded by TVA, where did the award go, where was it evaluated and awarded by TVA, that bid?

A It was bid and evaluated for f.o.b. at Colbert Steam Plant, f.o.b. barge at the Colbert Steam Plant.

Q Was there later a diversion of that coal to Widow's Creek?

A Yes, sir.

Q What happened after this article in the UMW Journal, did you have any problem with respect

[2652] to filling that contract?

A Yes, sir.

Q Now, turning to the Colbert Steam Plant, we make reference to Exhibit 175, and we refer to the bids that followed the award to the Whitwell Coal Corporation at that plant, specifically to the award made May 19, 1955, which showed the following companies filed bids evaluated identically at Colbert on the May 19, 1955 bid opening, all being evaluated at Colbert Plant at .1950, Nashville Coal Company, West Kentucky Coal Company, Pittsburgh-Midway Coal Company, Southern Coal Company, which is Peabody, and another bid by Southern Coal Company, which is Peabody.

We also make reference to the next succeeding bid opening at Colbert, the evaluations being identical at Colbert of the following companies, all being evaluated at .1948: Pittsburgh and Midway Coal Company, West Kentucky Coal Company on two bids, Nashville Coal Company, Southern Coal Company, United Electric Company, Kirkpatrick Coal Company and Bell and Zoller Coal Company.

* * *

[2653] Q Can you state what happened in respect to fulfilling the contract, did you have any interferences?

A Yes, sir.

Q Do you know when the strike occurred in 1955?

A October—excuse me, August.

Q Did you participate in any negotiations with respect to the matter that arose at that time?

A Yes, sir.

Q Do you recall when your first negotiations were and with whom?

A As I recall, it was August the 26th in [2654] the Reel's Cove office. Present was Mr. Travis, Mr. Everett Roberts, Mr. Albert Pass, Mr. Allen Condra.

Q Do you recall what was discussed at that time?

A Yes, sir, a demand that the company collect the 40 cents per ton welfare and remit to the Welfare Fund under the United Mine Workers contract, which these individual companies had signed directly with the union.

Q Do you know when the contract of 1955 came out, the amendment to the national contract?

A The amendment was effective in October, I don't know when it came out.

Q Do you recall whether or not the Coal Valley Mine signed the contract when it came out?

A Yes, sir, it did sign, no difficulty.

Q Was there a question at that time with respect to the escalation under the TVA contract and how much would be passed on?

A Yes, sir, it was.

Q And what negotiation and what arrangement was made with respect to that?

A The coal that we were purchasing from the small truck mines, we negotiated a settlement of 20 cents, 15 cents was payable to the coal miner on incentive ton rates and 5 cents to the trucker, a total of 20 cents.

Q How much were you receiving?

[2655] A Per ton? Excuse me.

Q How much were you receiving from TVA as an escalation raise price?

A 15 cents per ton.

Q Did you add 5 cents to that?

A Yes, sir.

Q And who was to get that?

A The trucker.

Q Had this matter been worked out before Mr. Pass came down here?

A Yes, sir.

Q And what was the subject matter of his visit here?

MR. RAYSON: Your Honor, we object to the last question. The witness hasn't said he was familiar with any of this matters or participated in any matters prior to Mr. Pass—prior to the meeting at the Reel's Cove office with Mr. Pass, therefore, we object to that and move to strike his answer.

Q Did you participate in any of the working out of the 20 cent increase?

A Yes, sir.

THE COURT: Now, is there any matter for the Court to rule upon?

MR. COMBS: I don't think so, your Honor.

[2656] Q Did you come to an understanding with Mr. Pass on your first meeting with him?

A No, sir.

Q What did he want in that first meeting, can you state what he said, what he desired?

A He wanted 40 cents a ton on all tons produced by the small truck mine operators on the property of Tennessee Consolidated which were committed on sales contracts, Whitwell Coal Corporation to the TVA.

Q Did you agree with that?

A No, sir.

Q Did you tell him why?

A The contract providing the 40-cent payment was a contract between the small truck mine operator and the United Mine Workers of America. These operators were independently operating and had their contract with the labor union. We had no way of legally cutting from the price that we paid the operator for the coal the 40 cents and thus accede to his demand of remitting that to the United Mine Workers Welfare Fund.

Q Did Mr. Pass give any suggestions as to what could be worked out?

A I think that Mr. Pass realized that——

MR. COMBS: (Interposing) Now, we object to the witness' speculation.

[2657] Q Yes, Mr. Callis——

MR. COMBS: (Interposing) "I think Mr. Pass may have realized."

A Mr. Pass asked for authorization forms to overcome the problem of no contract tie, that we could get

in between the contractor between the union and the operator, so he suggested authorization forms be signed by the small operator over to the company to collect the money for the union and remit it to the Welfare Fund.

Q Was this to apply on the existing coal sales contracts?

A No, sir.

Q Did Mr. Pass suggest that it apply on future coal sales?

A On new business, was the expression Mr. Pass used.

Q Why did he not want it to apply on the old business?

MR. RAYSON: Object to that question as leading, your Honor.

THE COURT: Sustained.

Q Did you have an existing contract at that time in which the coal was to be shipped for a considerable period of months into the future?

A Yes, the Contract 8595 was for two years.

[2658] Q Was there discussed at that meeting the price of coal under that contract and the amount that the operators were getting?

A Yes, sir.

Q And what did Mr. Pass say with respect to that?

A I don't quite understand your question.

Q All right, sir. Did the problem of authorizations subsequently get worked out?

A Yes, sir, on any new business. On Contract 8595 it was not—the authorization form did not contract—that contract supplied it—just wasn't economically in the price.

Q Did Mr. Pass consider the price that was being paid under the old contract, this 8595-A?

MR. COMBS: We object to that question, the form of

it, what Mr. Pass may have considered on the price.

MR. ROWNTREE: All right.

Q When was the authorization finally worked out and signed by the operators, the truck mine operators?

Strike the question.

Did Mr. Pass suggest authorizations on the old contracts?

A No, sir.

Q For coal?

A No, sir.

[2659] Q Did he express a reason why?

A He acknowledged that we could not afford it.

Q All right, sir. Now do you recall approximately the date, Paul, when they signed these authorizations, the truck mine operators?

A October 28th.

Q All right. Now, how long were the truck mines down during that period of time?

A Better than a month.

Q Do you recall when they were down with reference to when Coal Valley signed the National Bituminous Coal Wage Agreement Amendment?

A The October '55 amendment?

Q Yes.

A Your question was how long was Coal Valley down?

Q No, the truck mines.

A The truck mines? It was better than a month, Mr. Rowntree. I believe it was from August the 10th until, oh, into October.

Q All right, sir. Was it up until the time they signed the authorization?

A Yes, sir.

Q And that was October what?

A I think the final agreements were all cleared up, the authorization, the form and the style and the
[2660] wording was agreed, I think, on October 27th, and then the following evening there was a meeting of exchange of the authorizations and so forth in the Whitwell Commissary, Whitwell, Tennessee, and I think it was October the 28th.

Q All right, sir. Now, how many of those truck mines signed these authorizations on your property?

A All of them.

Q All of them. I show you a 3-page exhibit and ask you if you can identify that.

A Yes, sir.

Q What is that, Mr. Callis?

A This is a letter from the president of Tennessee Consolidated, Mr. Stanlee Hampton, the letter is dated February 4, 1957.

Q All right, sir. Now, was that letter sent to Mr. Ridings?

A Yes, sir.

Q Is this the same form? Let me ask you this: Did authorizations come back up for signature at the next national Bituminous Coal Wage Agreement?

A Yes, sir.

Q Were the authorizations signed at that time in 1956 or during the period of negotiation over that 1956 contract?

A I am not sure about that. They were
[2661] signed over this, this '55.

Q Fifty-five?

A But I don't know about subsequent to that.

Q All right. I will ask for that paper back.

I show you a file of letters and a contract file, Whitwell Coal Corporation contract-TVA8595, and I will ask you

if those letters represent copies of papers in that contract file.

A Yes, sir.

Q What is that contract file?

A This contract file contains a contract and all administrative correspondence between TVA and the Whitwell Coal Corporation carrying out the administration of the contract during the life of it.

Q All right, sir.

Now, we offer the copies, the set of copies of letters as the next exhibit.

MR. COMBS: We object to the whole thing. We think this is highly irregular, its correspondence between parties separate and apart from this lawsuit, it's hearsay as far as these defendants are concerned.

MR. ROWNTREE: If your Honor please, this is a record of interferences pursuant to the fulfilling of this contract that we talked about before, the May 1955 contract at Colbert and criticized by the UMW and the [2662] Journal and which was going on during this long stoppage in '55 and this is the record of correspondence with reference to these stoppages.

MR. COMBS: That's what they were telling the TVA, that the union knew nothing about, had nothing to do with, it's hearsay.

Q Mr. Callis, do these letters represent a true picture of the interferences that were going on during the course of the fulfilling of this contract?

A Yes, sir.

MR. COMBS: Now, we object to that general question. He hasn't shown anything in that letter, and just to say that these letters represent the interferences, I suggest the witness can testify as to what happened, what he has knowledge of instead of generalizing with the word "inter-

ferences".

The witness is forming a conclusion completely on what the file shows.

THE COURT: Are you ready for the Court to rule on the objection?

MR. ROWNTREE: Let me ask this question:

Q Mr. Callis, do you recall whether you had just one interference or how many interferences on the fulfilling of this contract?

MR. COMBS: We object to the form of the [2663] question, your Honor.

THE COURT: Overrule the objection.

A We had many interferences.

MR. ROWNTREE: We would extract from that file one letter and file the rest of the letters for identification. We offer this next letter.

THE COURT: Exhibit No. 277 for identification only.

(The file referred to above was marked P277 for identification only.)

MR. ROWNTREE: We offer as the next exhibit Supplement No. 10 to the 8595-A contract.

MR. COMBS: May we see it?

MR. ROWNTREE: Yes.

MR. COMBS: We object to the competency and materiality of it.

THE COURT: All right.

MR. ROWNTREE: This has to do, your Honor, with the loss of tonnage under this contract that was canceled and never delivered.

THE COURT: Are you objecting to the authenticity of this as being a supplement to the contract as represented?

MR. COMBS: No, we are not objecting to the authen-

[2664] ticity. I think it shows on its face that it is a supplement. We are objecting to the competency and materiality of it.

THE COURT: I believe I will overrule the objection.

(The coal contract amendment referred to above was marked P278 and received in evidence.)

MR. ROWNTREE: I will read that letter, a portion of it. This is regarding Contract 8595-A, Supplement 10, dated March 29, 1957, on Tennessee Valley Authority, the Whitwell Coal Corporation.

"This concerns the tonnage canceled from delivery by Supplement No. 9 to the above contract.

"Supplement No. 9 showed a total of 524,406.25 tons shipped on the above contract through March 1, 1957, which left a deficiency of 129,473.75 tons which was excused and canceled from delivery."

THE COURT: You wish to file that exhibit?

MR. ROWNTREE: That is the Exhibit 278.

THE COURT: Let's identify it a separate exhibit, 278.

Q Mr. Callis, do you know why that tonnage was delinquent and canceled?

A Yes, sir.

Q Why?

A August, September and October we lost [2665] approximately 50,000 tons on the settlement of the '55 amendment between the small mines, truck mines, and the United Mine Workers over the collection of the 40 cents and the authorization form and so forth.

Then immediately after the first of the year 1957, at the end of 1956, the tail end of the contract, there was a work stoppage whereupon the truckers stopped the coal from being brought out of these mines to the market and

Mr. Gilbert established a picket line in January, 1957, and the TVA canceled the contract that cost 75,000 tons——

* * *

[2667] Q Do you know who was the biggest shipper into the TVA system in 1956?

A West Kentucky Coal Company.

MR. RAYSON: What was the question?

MR. ROWNTREE: Who was the biggest shipper into the TVA system.

Q Now, Mr. Callis, the award sheets or the bid sheets for the February, 1956 bid opening, I would like to get straight on one circumstance, and that is your Exhibit 269, being the fuels branch evaluation of bids. I believe that carries different transportation charges on the West Kentucky field to Widow's Creek than does the bid evaluation sheet of the purchasing branch contained in Exhibit 175, and I point out that the Pond River Mine of Nashville Coal Company in Exhibit 175 carries a transpor-

[2668] tation charge of $2.15 to Widow's Creek.

What does it show on the exhibit that you have in front of you?

A $2.06.

Q 269. What is the charge there?

A $2.06.

Q Do you know why, can you give an explanation for the difference in those two charges?

A The fuels branch is required to supply the raw energy to the individual steam plant on a cost of electric energy produced basis. Therefore, they have a system of evaluating that is different from the system used by the purchasing division because they, after the coal is purchased they have the power and control to move this coal by diversion in larger quantities and at less transportation

costs. It is the property of the Government at that time and that is the reason for this lesser price, transportation costs.

Q Now, when did the 1955 Whitwell Coal Company Pocket truck mine contract expire, do you recall now?

A Approximately March 1st, 1957, I believe the starting date was February 21, 1955, and it was a 2-year contract.

Q Did you start trying to get other TVA contracts for the Pocket Mines?

A Yes, sir.

[2669] MR. ROWNTREE: We make reference to Exhibit 175 bid sheets where Whitwell Coal Company submitted a bid for $5.55 mine price for A. L. Henderson coal lease, Pocket.

Q Mr. Callis, did that bid include the 40 cents a ton for the truck mine welfare?

A Yes, sir.

Q We call attention to the same exhibit. I think I may have neglected to talk about the date of that first bid, November 16, 1956.

Now, on the next one, February 26, 1957, we call attention in the same exhibit to the Whitwell Coal Corporation bid, A. L. Henderson coal lease, Pocket, bid price of $5.60 at the mine.

Did that bid include the 40 cents a ton?

A Yes, sir.

Q We call attention to the next bid, May 9, 1957, Whitwell Coal Corporation, A. L. Henderson lease, Pocket, bid price $5.45, and ask you if that bid included the Welfare Fund of 40 cents.

A Yes, sir.

Q I call attention to June 6, 1957 bids, Whitwell Coal Company, A. L. Henderson coal lease, Pocket, bid

price $5.25 at the mine, and ask you if that bid included the 40 cents a ton.

[2670] A Yes, sir.

Q Did any of those bids get an award?

A No, sir.

Q I show you an invitation to bid form and ask you if you can identify that.

A Yes, sir.

Q What is that?

A This is a TVA bid offering or a bid that we submitted Whitwell Coal Corporation, June 6, 1957.

MR. ROWNTREE: We offer that as the next exhibit.

MR. COMBS: May we see it?

A I prepared the bid and signed it.

THE COURT: Exhibit No. 279.

(The bid referred to above was marked P279 and received in evidence.)

MR. COMBS: May we see it?

THE COURT: Yes.

MR. ROWNTREE: I believe this would be an appropriate place to take a recess. Take a 10-minute recess.

(Thereupon, a recess was had.)

MR. COMBS: We have no objection to that exhibit, your Honor.

Q Mr. Callis, will you look at Exhibit 279? What are the figures on the inside of the front cover

[2671] on that exhibit?

A These figures show the delivered price at Widow's Creek Plant less 20 cents barge.

Q Will you give the figures, give the figures as you go down?

A $5.45 delivered, 20 cents is barge, makes $5.25 South Pittsburg, 5 cents charge through the dock, $5.25

f.o.b. truck, $1.25 is truck charge, $3.95 f.o.b. mine, 40 cents welfare, leaving $3.55, 50 cents profit, leaving $3.05, 10 cents insurance, leaving $2.95 operator price.

MR. COMBS: Pardon me, Counsel. We point out to the Court that that is a pencil notation, it is not part of the exhibit that he is reading.

THE COURT: All right.

MR. COMBS: I want to make it clear it is not part of the exhibit.

Q Is that pencil notation made on the file copy there, Exhibit 279, at the time the bid was submitted?

A Yes, sir.

Q Now, Mr. Callis, what does the last figure represent on that computation?

A The last figure of $2.95 represents the price paid to the small truck mine operator for his coal.

Q Would that be at his tipple?

A At his tipple.

[2672] Q What does the "50 cents profit", represent

A The 50 cent profit represents royalty for the removal of the coal from the ground to Tennessee Consolidated. At that time 25 cents, and the balance of it covered the cost of administration, billing, engineering, other services provided to the lease operator in handling the sale of the coal, including the selling cost.

Q All right, sir. Now, do you recall whether or not the Pocket Mines on Tennessee Consolidated property tried to get thereafter that bid direct contracts with TVA?

A Yes, sir.

Q What were these two groups called, the truck mines?

A Floyd Hollow and Bee Branch Coal Companies.

Q We refer to Exhibit 175, bid of Floyd Hollow Mine Company at the bid opening of May 20, 1958, bid

price of $4.78, plus 55 cents transportation costs to Kingston plant, total of $5.42 delivered at Kingston, and the bid of Bee Branch Mining Company for the same prices.

Was an award made on those bids in May, 1958?

A Yes, sir.

Q We refer to the award sheet record of TVA. Do you recall whether or not they submitted two bids there in 1958?

[2673] A Now, they did submit two and one was not accepted and one was accepted.

Q Which one was not accepted, the first or the second?

A The first one was not accepted and the second one was accepted. I don't recall the exact date.

Q All right. We refer to the October 7, 1958 bids to TVA, the bid of Bee Branch Mining Company for a bid price of $4.54 at the mine, plus 55 cents transportation costs, plus 9 cents handling cost, making a delivered price of $5.18, and the same price in the bid of Floyd Hollow Mining Company on that bid opening, and I should have stated with reference to the May 20th, 1958 bid that there was a 9 cent handling cost added to those two to make up the delivered price on those bids of $5.42.

Now, Mr. Callis, this Exhibit 175 on the May 20, 1958 bid shows that the $4.78 price was to be f.o.b. Mile Post 418. Is that the South Pittsburg dock?

A Yes, sir, that's the river terminal at South Pittsburg, Tennessee River Mile 418.

Q Now, remember that barge, f.o.b. barge price of $4.78, how does that compare with the f.o.b. barge price on Exhibit 279?

A F.O.B. price, f.o.b. barges, Mile Post 418 on Exhibit 279 is $5.25.

[2674] Q So on the May 20th, '58 bid there was

a reduction of that price from?

A $5.25 down to $4.78.

Q Was that f.o.b. the barge price on that exhibit you are looking at?

A Yes, sir.

Q All right. So that was a reduction of how much?

A 47 cents.

Q Now, who stood the reduction of that price, the truck mine operator or——

A (Interposing) I think it was shared by all, the company took the lion's share of it.

Q All right, sir. Now, on the October 7th, 1958 bid of these two groups, Floyd Hollow and Bee Branch, that price of $4.54 was likewise f.o.b. Tennessee River Mile Post 418 at South Pittsburg.

So how much more reduction was there before the award was made, $4.54 subtracted from $4.78, that equals 24 cents reduction, is that right?

A Yes, sir.

Q Who stood that loss?

A Equally distributed through the coal operator and the company.

[2675] Q What were the mines in the Pocket doing in this interim between the expiration of the 1955 contract in March of '57 and the award on the Bee Branch-Floyd Hollow bids in October of 1958?

A They were shut down most of the time, however, the individual operator tried to sell some of his coal to different consumers in Chattanooga and around the local area. There was not much activity, they were just simply just about out of business.

Q All right.

MR. COMBS: What date is this?

MR. ROWNTREE: Between March 1957 through

October 1958.

Q Did the company withhold the Welfare Fund money under the Floyd Hollow-Bee Branch?

A Yes, sir.

Q Contract.

A Yes, sir.

Q Did it forward funds to the Welfare Fund through some of the period of that time?

A Yes, sir.

* * *

[2903] **HOUSTON BEAUMONT,**

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROWNTREE:

Q What is your name, sir?

A Houston Beaumont.

Q Where do you live, Mr. Beaumont?

A Sewanee, Tennessee.

Q What is your occupation?

A I am vice-president and secretary of Tennessee Consolidated Coal Company.

Q How long have you been employed at Tennessee Consolidated?

A Since August, 1956.

Q What was your employment before that time?

A I was with the Tennessee Valley Authority in the Coal Procurement Branch, Chief of the Coal Contracts Section.

Q What period of time did you work in that branch?

A The best of my recollection approximately three years.

MR. RAYSON: How long?

MR. ROWNTREE: Three years.

Q Mr. Beaumont, were you employed at Tennessee Consolidated in December, 1961, at the time of
[2904] the bid opening; of that month's TVA bid opening?

A Yes, sir.

Q Did you assist in the computation of the bid of Tennessee Consolidated for the Coal Valley Mine and for the truck mines on Tennessee Consolidated properties?

A Yes, sir.

* * *

[2905] Q Mr. Beaumont, will you explain how the bid of Tennessee Consolidated for Coal Valley and for the truck mines were computed in December 7th, 1961?

A Yes, sir. In preparing bids for submission to TVA we generally check back on previous bid tabulations, tabulations of the bids submitted to TVA by various coal mine operators that we consider competitive and West Kentucky being the principal area of competition at that time, in considering the previous bids I was reminded of the bids submitted in, I believe, January or February 1961, by the West Kentucky Coal Company that offered a million tons a year on a base schedule with an option million tons a year at the same price, and I believe allowing TVA approximately one year in which to exercise the option for the second million tons per year. That was a long-term contract, as I recall, it was ten years or longer.

TVA had bought the first million tons. The optional million tons was still in abeyance. I don't recall with whom I talked to in TVA, but I believe I talked with several people, and I was told that the option was considered still

valid and that they were considering purchasing that coal prior to the expiration date of the option.

[2906] I, of course, had computed the cost per million BTU of that bid, which was the same for both the base and the optional tonnage, and in computing that then I had to decide at what level cost per million BTU's we had to submit our bid on in the hope of getting business at the Widows Creek Steam Plant. The cost per million BTU of West Kentucky Coal Company's bid allowing for what we call a long-term escalation credit of a half a cent a million evaluated at 20.25 mills, as I recall. Without the credit, it evaluated at 19.85. Now, that is assuming a freight rate within the range of freight rates, Section 22 freight rates that was then in effect with the L&N Railroad from West Kentucky into the Widows Creek Steam Plant.

MR. COMBS: Would counsel mind? I didn't get that BTU. When you are talking about 20.25 mills, are you talking about 2.025?

THE WITNESS: Well, there are two ways of using the figure 2025. If you are referring to cents, it is 20.25 cents.

MR. COMBS: Oh, okay.

THE WITNESS: If you are using it in terms of dollars, it would be .2025.

MR. COMBS: Okay.

A We had two bids to submit, one was a long-range bid that we proposed for the Coal Valley mine of

[2907] approximately eight years. The invitation permitted the election of the long-term credit for wholesale commodity index escalation, allowed a half cent a million, so basically our bid was 19.72 cents a million with a long-term credit it would have evaluated, as I recall, at 20.22 a million, which is a shade under

the evaluation I gave the West Kentucky Coal Company bid.

As I recall, I used a dollar and forty freight rate on the West Kentucky bid for the simple reason that I had determined the volume of coal moving under or across the L&N system and with the purchase of that optional million tons from West Kentucky that automatically brought it down to $1.40 a ton, so I used that $1.40 with the West Kentucky price, and when I rounded it out, then I computed our two bids basically at 19.72 each and submitted them with the knowledge that they would be from 2 to 3 cents a ton equivalent lower than the West Kentucky optional tonnage.

Q Did you observe any other options that West Kentucky Coal Company had given TVA in prior years?

A Yes, sir. In exploring the bid they submitted in 1961, right after the bid opening, I found a letter attached to a West Kentucky Coal Company bid and I believe this bid was in August, the bid opening was in August of 1961, and that letter made reference to a previous bid submitted by West Kentucky Coal Company in either January or February of 1961, and, as I recall the contents of the letter——

[2908] MR. COMBS: (Interposing) Now, we object to him quoting the contents of the letter as not being the best evidence. If he is going to say he did something as a result of reading the letter or something like that, I have no objection, but when he starts talking about the contents of the letter, we submit that the letter is the best evidence.

BY MR. ROWNTREE:

Q What effect do these options that West Kentucky Coal Company gave to TVA have on the bidding in the southeastern Tennessee field?

A It would have the effect of placing an economic ceiling on what we could do and if we expected to get business with the volume of coal that was being offered we had no choice but to bid below the prices or the cost of a million BTU that West Kentucky bid.

MR. COMBS: We object to the answer, it's all conclusions on the part of the witness without reference to facts, it's all conclusions, "economic ceilings," "no alternative," all of that is to be determined by the facts.

THE COURT: Well, it is something in the nature of an opinion, but I believe I will overrule the objection and allow it for whatever it may be worth.

* * *

[3369] MR. ROWNTREE: If your Honor please, we'd like to read into the record Exhibit P159, which is Page 12 of the UMW Journal of November 1, 1963.

MR. OWENS: What is the number of that exhibit?

THE COURT: One hundred fifty-nine.

MR. ROWNTREE: It's on the editorial page of the UMW Journal for that edition captioned, "A salute to 600 valiant men of District 19 in Tennessee.

"The Tennessee hills south of Chattanooga, which border on the Deep South States of Alabama and Georgia, are filled with valuable coal. Since last Christmas 600 coal miners living in these rugged, ancient mountains have been waging a fight for the UMWA that has been almost without parallel in recent years.

"For ten months these hardy, devoted union men have been fighting successfully against the combined efforts of their employers, a company-dominated rival union, injunctions issued by United States and local courts, and real and threatened violence. It is heart-warming to report that the battle is being won.

"Symbolic of eventual victory was an October 15 election conducted by the National Labor Relations Board at Jasper, Tennessee. There were 158 unchallenged
[3370] ballots cast. Of these, the UMWA received 108 and the Southern Labor Union 50. A total of 421 votes were challenged, 42 by UMWA observers at the election and 379 by the NLRB. We are sure that virtually all of the votes challenged by the Board were cast for the UMWA. So, if all 42 votes challenged by the UMWA are tallied, the election still belongs to our union, even if the NLRB throws out all remaining ballots.

"A book could be written about this long strike. Basically, it is against two large coal operators, the Tennessee Consolidated Coal Company and the Grundy Mining Company, plus small captive operations which produce their coal for these two big companies. Coal from the Sequatchie Valley, 'the Pocket' and other areas in the Southern Tennessee mining counties of Grundy, Marion and Sequatchie is shipped to TVA Steam Plant at Widows Creek, Alabama. In spite of this assured market at a profitable price, the Southern Tennessee operators decided to terminate their agreement with the UMWA last December. As a consequence, virtually all miners in Southern Tennessee left the pits the day after Christmas and have remained away from work ever since.

"Since then, the operators have used all of the anti-union techniques which have now become all too familiar to many members of the UMWA. Injunctions against legitimate picketing were obtained from local and Federal Courts.
[3371] Threats of death to union men and harm to their familiar became the order of the day. Our members were also told if they refused to work at sub-standard wages that the mines would be permanently shut

down. The companies abetted the efforts of a so-called labor organization, the Southern Labor Union, to 'organize' the miners, and in pre-election propaganda urged employees to vote for this company-assisted union. Multi-million dollar lawsuits have been filed alleging violation of the Taft-Hartley Law and five days before the election an antitrust suit asking for 4.5 million dollars in damages was filed in the Federal Court at Chattanooga, the latter an obvious propaganda device to attempt to influence the outcome of the NLRB election.

"The operators have bombarded coal miners in Southern Tennessee with all types of propaganda, including flyers, advertisements in local weekly papers, spot ads on the radio, and mailing out of an open letter addressed to area coal miners by a renegade former official of the UMWA.

"All these devices failed, as they were destined to, because they were based on untruths. The UMWA's officers in District 19 relied upon the loyalty of the membership and hard work to insure the successful outcome of this election. Too much credit cannot be given to these leaders—President William Turnblazer, Secretary-Treasurer Albert Pass, International Board Member James Ridings, and District Representatives
[3372] Ernest Stults and Howard Madewell. Of course, their efforts received full support and guidance from UMWA President W. A. Boyle.

"However, our officers are the first to acknowledge the fact that credit for the courageous fight being waged by these men belongs to the men themselves and to their local union officers. They have refused to accept work as scabs and remained loyal in spite of short rations for their families and the many other hardships strikers have endured throughout the long and glorious history of the UMWA.

"The battle is not over. A contract with these obdurate, stubborn and hard-headed operators and their attorneys must be negotiated before the victory is complete. Yet, the men of the pits in Southern Tennessee are facing the cold winter months staunch in their conviction that they will soon return to work under the protection of a contract that gives them good wages, provides them with welfare fund benefits unparalleled in our country, full protection of a safety code, plus the other provisions essential to the dignity and well-being of an American who works in our coal industry.

"We are sure that all good union men in the United States will join us in saluting the 600 men who are fighting a battle for themselves—and us—in the hills and valleys of Southern Tennessee."

* * *

[3373] MR. ROWNTREE: If your Honor please, the plaintiffs rest.

* * *

[3433] **W. A. BOYLE,**

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COMBS:

Q Will you state your name to the Court, please?

A My name is W. A. Boyle.

Q What is your present position, Mr. Boyle?

A I am International President of the United Mine Workers of America.

Q When did you assume that position?

A I was first acting vice-president or president in the fall and winter of 1962. I was elected to the office of president and took office on January 19th, 1963, upon the death of the former president.

Q Were you elected for a term in that office subsequent to that?

[3434] A I was elected last December for a term of five years.

Q And when did that term commence?

A April the 1st of 1965.

Q Who was your immediate predecessor, Mr. Boyle?

A I didn't hear the question.

Q Who was your immediate predecessor as president?

A Mr. Thomas Kennedy.

Q Is he deceased?

A He is.

Q Mr. Boyle, I would like for you to give a brief history of your first position that you held with the United Mine Workers or subordinate unit of United Mine Workers and describe briefly the type of position you held with the Mine Workers union. I think probably you can commence at the local union level.

A Going back to the local union level?

Q Yes.

A Well, I served in all of the offices of the local union or local unions that I was a member of, and I served in all of the district offices and those offices, do you want them by name in the local union?

Q Well, not necessarily, but you were a local union officer, held all of the local union offices, such as president, mine committee, secretary-treasurer?

[3435] A I was elected to each and every one of those offices.

Q And were you elected to the district presidency of a district?

A I was elected, I served on the scale committee for the district, I served in all of the district offices by election as secretary-treasurer and presidency, I was elected district president for that district on numerous occasions, several different elections. I also served as the International Board member for the same district in later years.

Q What district was that, Mr. Boyle?

A District No. 27.

Q Was that district known as an autonomous district

A Yes, sir.

Q Now, what is the first position that you held when you went to Washington?

A When I went where?

Q When you went to Washington.

A I was assigned as assistant to President John L. Lewis.

Q And then where did you go from there?

A Then upon the retirement of President Emeritus Lewis, why, I was selected during the interim period by the International Executive Board as vice-president by election and then was elected to the office as vice-
[3436] president following that interim period.

Q And then at the death of Mr. Kennedy you assumed the office of presidency by virtue of the fact that you were vice-president?

A Prior to his death and during his illness I was the acting president.

Q Acting President?

A And then I became the president upon his death.

Q Right. Now, Mr. Boyle, would you describe for the Court your mining experience in the coal mines and

where you had this experience?

A Well, all of my experience in coal—in mines, it doesn't run exclusively to the coal mine, I have worked in the quartz mines of the country.

Q What part of the country?

A I worked mostly in Idaho in the quartz mines and the panhandle of Idaho, in what is known as the Wallace-Kellogg-Burk-Mullin area. I worked in the coal mines and in the quartz mines all of my life.

Q Now, Mr. Boyle, this case involves, as you know, the operation of machinery and equipment. Would you describe some of the particular work that you did in the coal mines, the classifications, what kind of work did you do?

A Well, as a young boy I started out in the mines driving a mule, I later became a motorman,
[3437] later I advanced to brattice work.

Q Will you explain what brattice work is?

A Yes, that is temporary and permanent stoppings that are put through in breakthroughs to cruise the air throughout the mine, ventilation, and see that air gets to the proper working places and ventilates it for the men in the working places.

Then following that I was a timberman. I timbered for a while. Later I became a machine, cutting machine operator helper and then I became a machine operator.

Q Cutting machine?

A Cutting machine operator. Later I became a helper on one of the large loading machines.

Q What kind of loading machine was this? Was this getting—this approaches mechanization, that's what we are talking about, mechanization.

A This is when the mine had moved from the hand-loading status through a mechanized status and the fully

mechanized status in those mines and they removed the animals from there and put motors in and things of that nature and they mechanized the mine and did away with the obsolete methods of mining coal, I would say, that brought them more up to date.

Q About what period of time was this?

A In the large mine that I was working in
[3438] that completely converted was in 1930, I believe, or '32, along in there.

Q All right. Go right ahead. Was there anything else?

A On what?

Q On your experience. Did you run any other type of equipment?

A Yes. I was a shot firer, I was a driller and shot firer and I was running this large loading machine when I was elected to the office of district president.

Q Did you work at different mines?

A I worked in a number of different fields and a number of different mines, yes, sir.

Q Were these deep mines or strip mines?

A All deep mines. I never worked in a strip mine.

Q Were the seams of coal that you worked in, did they vary or were they——

A (Interposing) Yes, they did vary.

Q In thickness and the types of coal?

A That is true.

Q Different kinds. Now, Mr. Boyle, have you held positions on governmental bodies, state, federal or international bodies?

A Yes, I have.

Q On the government level?

[3439] A I have.

Q In connection with that, did you serve

in your state on the Workman's Compensation committee in some capacity?

A On the advisory board and on the panel hearings that were conducted I was representing labor for the state on Workman's Compensation. I also was labor's first appointee representing labor on the advisory board of the Unemployment Compensation Commission for the state, and I served on the War Labor Board panels. I served on tri-partite panel hearings.

Q Did you serve on Manpower Councils?

A I did.

Q War Labor Board panels?

A Yes, sir.

Q On the state level?

A Yes, sir.

Q Now, what about the federal government?

A Those appointments, however, come from the president of the United States, even though they were state appointments.

Q Would you speak up just a little bit?

A I say, those appointments were made by the President of the United States, even though they were state appointments, because it was during the war period.

Q Right. Now, did you also serve at one [3440] time in the Interior Department on the solid fuels?

A I was selected after I came to Washington, I was selected as the Deputy Solid Fuels Administrator in the Department of Interior.

Q Are you presently a member of the President's Advisory Committee on Labor-Management Policy?

A I was appointed as a member of that committee under President Kennedy and I am still serving under President Johnson.

Q Did you have occasion to meet with President Kennedy and President Johnson with reference to your

duties on that?

A Quite frequently, yes, sir.

Q And you are presently a member of those bodies?

A That is true.

Q Would you describe briefly, just describe what these bodies consist of, who composes the bodies?

A Of the President's Advisory Board?

Q Yes.

A Well, it's composed of all of the major industries and industrials on the part of management, it is composed of a number of heads of or prominent university professors. Labor is represented on the committee by President Meany of the American Federation of Labor, Mr.
[3441] Joseph Keenan of the Electrical Workers, and Mr. Walter Reuther and myself.

Q Do you serve on any international bodies in your capacity as president of the United Mine Workers? What about the Miners International Federation, are you a member of that?

A Yes, I am a member and on the executive board of the MIF, which is known as the Miners International Federation.

Q What countries are represented on that?

A That is the body composed of both coal miners and metal miners throughout the world, the Free World, that is.

Q Now, are you a member of the executive board of the International Confederation of Free Trade Unions now?

A I am.

Q Would you describe briefly what that body is and what it consists of?

A Well, the International Confederation of Free Trade Unions is a body that is comprised of delegates,

not necessarily restricted to mining, but delegates from all labor throughout the Free World. Most of those meetings are conducted in Europe.

Q Have you attended any of those meetings?

A A number of them, yes, sir.

[3442] Q Recently, in the last few years?

A Yes, sir.

Q Are those meetings sponsored by governments?

A Those are sponsored by the governments and the ILO, which I also attend, is sponsored more or less by governments, that's the International Labor Organization where government, labor and industry are represented.

Q Right. Now, getting back to your duties as president of the United Mine Workers and your experience as an officer in that, would you describe the method by which the Mine Workers formulates its bargaining demands to be presented to the coal operators' bargaining units? Would you describe the method of selecting or the manner of arriving at the demands that you present to the coal operators?

A Well, yes. The demands are not comprised or composed by the officers of the union, they are originated at the grass roots, so to speak, and come from the local unions. They come from the local unions in the form of resolutions and those resolutions are submitted to what is known as the scale committee at the convention of the International Union, and the convention provides for a policy committee and a scale committee and the scale committee resolutions that come in from all of the various local unions throughout the entire industry receive the attention of the scale committee, and they are brought to the floor of the convention for consideration

[3443] and those then become the demands of the scale committee headed by the officers of the Inter-

national Union when they meet in negotiations with the coal operator groups.

Q Now, let's start out, as an example, with a coal miner that is a member of a local union and he wants to have a resolution with reference to his working conditions or his wage demands.

Does he go to his local union and present it to the local for their consideration, is that the way it starts?

A That's right. Each local union has its resolution committee duly elected.

Q And then this resolution, if it is adopted by the local union, is that sent in to the convention?

A Then that is forwarded to the scale committee at the national headquarters, which goes to the convention.

Q And then when the convention convenes, do they have committees that consider these resolutions?

A Very definitely so, yes, sir.

Q Now, are all of these resolutions voted on one way or the other, they are either approved or disapproved by that committee?

A By the convention, not by the committee. The committee cannot kill a resolution, the committee cannot arbitrarily set aside a resolution. All of those [3444] must be printed and receive the attention of the convention by the recommendation of the committee, but each delegate that is there from his local union is privileged to speak on any and all resolutions that are submitted to the convention and, in other words, it is the most democratic form of handling resolutions of any organization or even the governmental bodies that I know of.

Q Well, now, in connection with that, the convention then in acting on these resolutions that you mentioned a while ago that they set up a policy committee.

Now, what is this policy committee, what is it com-

posed of?

A The policy committee is composed of—the convention provides for the arrangement of a policy committee and each local union, according to the number of members that make up the local union, and on those bases, the per capita, we call them, are entitled to not less than one representative on the scale committee but proportionately they are entitled to scale committeemen representation of the numbers of members they have in their local union.

Now, then, we go back then from the convention, they usually have a district convention or they have meetings that satisfy the membership along those lines, mostly in conventions where these delegates are selected to represent that district, but these delegates come
[3445] from the local union that attend the convention and out of that comes your scale committee.

Every local union would not necessarily have a delegate on the scale committee. They come out of the district arrangement.

Q Do the International officers, that is, the president of the United Mine Workers, the secretary-treasurer and the vice-president, are they members of that policy committee?

A Yes.

Q Do they head the policy committee?

A They are by virtue of being the officers.

Q Do you all have the districts in the bituminous coal industry in the United Mine Workers entitled to representation on this policy committee?

A All of them are.

Q Yes.

A They are entitled to them proportionately as to the number of people that they represent, as I said.

Q For instance, would you offhand know how many policy committee members District 19 has?

A District 19, I wouldn't know without looking at the record, but I would venture a guess that they would have in the neighborhood of three, maybe four.

Q Now, Mr. Boyle, in connection with
[3446] the formulation of the bargaining demands and the setup of the policy committee that you have been testifying about, does any employer participate in that activity, do the employers, the coal operators, have anything to do with that formulation of the demands or the composition of the policy committee in any way?

A Absolutely not. You mean coal operators formulate the Mine Worker demands?

Q Yes.

A Absolutely not.

Q Now, have you participated in making a policy as a member of the local union that you have described here personally?

A Yes. I am quite proud to say that I have served from a local union level to the presidency of this organization on scale committees on the local, district and the international level ever since I have been old enough to hold office in the union.

Q Have you served on their policy committee as a district officer?

A That is right.

Q Have you served as a member of the policy committee itself?

A I have.

Q Did you have any capacity, as assistant
[3447] to President Emeritus Lewis' policy committee, did you attend the meetings?

A I did.

Q As the vice-president of the United Mine Workers did you participate?

A I did.

Q And, of course, as the president you are the chairman of that policy committee, I take it?

A I am.

Q In its sessions?

A I am.

Q Now, I believe you said that you became acting president in 1963, was it?

A '62.

Q '62. Now, since you have been—well, let me put it this way, when was the last contract of the United Mine Workers negotiated?

A The last contract?

Q Yes.

A The last contract negotiated became effective April 2, 1964, known as the 1964 Agreement.

Q Now, prior to that what was the last contract?

A 1958.

Q Now, in the 1964 contract, did you actively participate in the negotiations of that contract?

[3448] A Every minute of it.

Q Who else represented the Mine Workers in those negotiations?

A International Secretary-Treasurer John Owens and former Vice-President R. O. Lewis.

Q Now, what group of operators did you first negotiate, with whom did you have the first meetings?

A The group that is known as the BCOA, Bituminous Coal Operators Association.

Q Who represented the BCOA?

A In the initial negotiations and to a conclusion, why, one of the representatives and the first was Edward G. Fox, I think are the initials, Edward Fox, anyway.

Q Now, we have an exhibit here, Mr. Boyle, it is D136, and I would like to ask you some questions on this exhibit.

This exhibit, Your Honor, is Defendant's Exhibit 136 and is the joint report of the International officers to the 1964 convention of the United Mine Workers.

Mr. Boyle, would you please turn to page 4?

A 4?

Q Yes.

A All right, sir.

Q Did you participate as president in this report, the joint report of the International officers? I [3449] notice that it is submitted by W. A. Boyle, President, R. O. Lewis, Vice-President, John Owens as Secretary-Treasurer. Did you participate in the formulation of this report to the convention?

A Yes, sir. This was a joint report that is required to be submitted to the convention by our constitution and the International officers.

Q On page 4 that I referred you to, is that a description of the negotiations that you had leading up to the negotiations at that time commencing on page 4, the bituminous wage scale conferences and agreement?

A Yes, sir, it is.

Q Now, when did these negotiations commence?

A '64 negotiations commenced in late December of 1963.

Q How long did they last?

A Well, the negotiations were consummated by the policy committee on March 23, 1964.

Q And I believe you said the contract became effective in April, April the 2nd?

A That is right.

Q Now, in these negotiations what kind of meetings

did you have, did you have frequent meetings between December and March?

MR. ROWNTREE: Object to his leading and [3450] suggesting.

MR. COMBS: Well, he has the exhibit in front of him. I withdraw the question.

A What was that?

Q I withdraw that question and rephrase it. The negotiations that were carried on that you testified to commencing in December, the contract that was formulated and submitted in March you testified to, how many meetings did you have between then, or approximately, do you recall?

A No, I don't recall right off, but we met practically constantly and we had many, many, many meetings that went into the late hours of the evening and at night and lasted, those meetings would last from 9:00, 9:30 in the morning and recess an hour for lunch, ordinarily as I recall, and then we would go back into negotiations and they would again recess for dinner in the evening and those negotiations would continue then until 10:00, 11:00, 12:00, 1:00 o'clock in the morning and one session lasted until 10 minutes to 4:00 that started in at 9:00 in the morning.

Q Now, do you remember who participated in those meetings besides Mr. Fox?

A Oh, yes, sir, I do.

Q Would you name them, please, to the Court?

A Well, there was the representative of the Consolidation Coal Company and there was a repre- [3451] sentative of the steel industry.

Q Is that at the captive mines?

A All of the captive mines, yes, sir. There was the——

Q (Interposing) Do you remember the name of the person representing the captive operators?

A I remember all of their names, if you want them.

Q Yes, I would like to have them.

A Mr. McElroy represented the Consolidation Coal Company, Mr. Heath Larry of the United States Steel Corporation represented the captive group, Mr. Potter, sometimes known as Dr. Potter, represented the holdings of R and P.

Q Would you speak just a little bit louder, Mr. Boyle? R and P, that is Rochester and Pittsburgh Coal Company.

A On the closing negotiations there was one other, maybe two, but I just don't recall their names right now.

Q Now, in connection with this I'd like to read, by virtue of a stipulation, we have in connection with this witness' testimony, I'd like to read an excerpt from Exhibit D136 on page 4 into the record.

It is entitled, "Bituminous Wage Scale Conferences and Agreements.

"In December, 1963, your International officers, acting under authority granted by the International convention and the national policy and scale committee
[3452] began negotiations with the Bituminous Coal Operators' Association for a new contract. These negotiations were carried on for days, weeks, and months. All resolutions forwarded by the local unions, including all that were referred to us by the last international convention, were carefully studied by the international officers. Almost all of the suggestions in these resolutions, such as weekly paydays, severance pay, pay for holidays, 6-hour workday, shorter work-week, vacation pay, Welfare and Retirement payments, shift differentials, seniority, and many others too numerous

to mention were discussed during this long period of negotiations.

"After lengthy deliberations with the operators a tentative agreement was reached subject to the approval of the national policy and scale committee, which was assembled on March 23, 1964. After the tentative contract was read to them, the national policy and scale committee authorized the international executive officers to sign it.

"The contract provides for a new mine-wide seniority clause; no charge for wash houses; $225 pay for 2-weeks' vacation; $2.00 per day wage increase across the board; two separate vacation periods are provided in order to eliminate the argument about not being able to secure union-produced coal during the vacation period. In order to expedite and facilitate the loading of unit trains with coal already processed or stored, double-
[3453] time pay for work performed on Sunday is provided. It further provides for the payment by signatory operators to the agreement of 80 cents per ton to the UMWA Welfare and Retirement Fund on coal bought, sold, or marketed where the forty cents per ton royalty has not been paid. It provides for the use of helpers on machines. These clauses will provide millions of hours of employment for our members already employed by signatory operators and many new jobs for those now laid off on idle panels. These and many other provisions of the contract are of such substantial improvement that it makes it one of the best contracts that we have ever negotiated.

"Press releases, communications and statements are chronologically listed together with the text of the National Bituminous Coal Wage Agreement of 1950 as amended effective April 2, 1964."

Now, Mr. Boyle, on page 5 I notice that there is a check there or a page there devoted to the rates of pay for the various classifications of labor under this contract, and I note at the bottom of the page that the increas for tonnage workers, yardage, deadwork and footage rate that there is an increase of $16.25 over the 1945 rate.

Now, what does that $16.25 represent?

A That represents the increase that was carried forward. It is not actually an increase as it [3454] would appear there of $16.25. They negotiated during the 1964 contract, that is, brought up to date from what it was in 1945, '46, '47 and all of the contracts that preceded this contract from 1945.

Q Did this also apply to the day workers, this $16.25 increase?

A It would amount to the $2.00 a day increases, yes, sir.

Q Now, is it your testimony that the $16.25 or the total of the increases, including the 1964 increase negotiated by the Mine Workers from 1945 until the effective date, including the effective date in 1964?

A Yes, that is true, and if you take from 1945 to the present day you can very easily and simply arrive at the increase that the Mine Workers have received during that period of time. It doesn't show on the surface, it has been a $2.00 a day increase, it is not actually so——

Q (Interposing) Well, actually then the $16.25 a day is over a period of some 20 years?

A That is right.

Q And the increase amounts to something less mathematically, to something considerably less than a dollar a day per year in a 20-year period?

A In my mind right now it figures out closer to 80

[3455] cents than it would anything, 20 years into $16.25 would be about 80 cents, or thereabout.

Q Now, would you turn to page 12 of the exhibit that you have there?

A Yes, sir.

Q Now, I notice a title there "Seniority." What were the demands of the Mine Workers that they made to the operators on this seniority, what did you demand?

A Well, we —

Q (Interposing) Pardon me, strike that question, and let me put it this way, Mr. Boyle. Is this clause, the seniority clause, different than the 1958 contract clause?

A It is considerably different.

Q Was that the result of demands made by the Mine Workers?

A Yes. We didn't get all we asked for on the seniority clause, but this improves the former seniority clause a great deal, and we were fortunate to get this, I guess.

Q Would you explain to the Court just what the seniority clause is, what the dispute was about the seniority clause that you eventually got, what was the dispute?

A Well, in the prior contract, in all fairness to all of the negotiators of the United Mine Workers I happened to be at one of them and it was negotiated at a time under some duress and some pressure, we attempted to write a clause in '52 similar to this clause.

[3456] We had a contract, that is, the international officers, the, Mr. Secretary-Treasurer John Owens and Vice-President Kennedy, President John L. Lewis and me, as the assistant, I remember I had the pleasure and honor of serving as the subcommitteeman

on those negotiations with Mr. Owens and Mr. Kennedy and the operators had three representatives on the sub-committee, and we had a contract, so to speak, but we couldn't agree on seniority, and we were ordered and directed to get that contract in movement, and so we accepted the contract seniority clause as negotiated in 1952 which provided for classification seniority.

The officers of the International Union and myself, not an officer at that time, accepted that because they had very little, if any, seniority in many of the districts and it was a step in the right direction. Rather than having no seniority at all, why, we accepted it, but it has always been thought, it has always been the intention of the international officers of the International Union to improve that seniority and we did it in 1964.

Q Now——

A (Interposing) We did not get everything we asked for in 1964.

Q I take it the operators resisted your demands on this seniority?

[3457] A This was the first demand, if you want to put it in the form of demand, or request, this was the first one that was submitted to the operators by Mr. Owens and myself, by Secretary-Treasurer Owens and myself when we first met with the operators, and it was the last one that was agreed upon.

Q The last one agreed to before the contract was formed?

A That is correct.

Q Now, in what way did this clause improve over the other contract clause?

A Well, the classification seniority provided that the men would hold their seniority in a certain classification in which they were employed and unfortunately,

and we knew that that could work out that way to some degree, but the disadvantage to the Mine Worker in classification seniority, that we had known for many, many years, has been that they are placed in a classification. Senior employees or senior in employment with the company are placed in a classification and then at the whim of the coal operator that classification is removed from the payroll or dissolved and the older and more competent employee is placed on an idle panel while younger or newer men are in the employ of the company performing work for which they have had many, many years of experience and well qualified to perform.

[1458] That happened to the extent that many thousands of men employed in the industry lost their employment just by some mine foreman or someone like that placing them in a classification and then abandoning the classification or laying off the individual in the classification because he was the youngest man in that classification, notwithstanding he could be the oldest man in employment with the company, competent, capable of performing that work.

We corrected that in the 1964 contract.

Q Was that reflected in the resolutions and the concern among the Mine Workers?

A That was the principal, I would say that was the principal one, took precedent over all resolutions that came to the national office that I have knowledge of. They were more determined to have job protection and job security, which they have in my opinion for the first time in the manner prescribed in the contract and now the senior man—I'd like to give an illustration to you, if you don't mind, Counsel.

Q Go right ahead.

A I have attended a great many meetings of our

international executive board dating back into the thirties. My curiosity was aroused after I had my last meeting of the national executive board as president elected by the membership at this last election.

[3459] I had a check made of the discussions that were had by the members of the international executive board on appeals from local unions, appeals from individuals that were presented to the board on the matter of seniority and we could find nowhere in any board meeting where there wasn't a portion of a day to several days consumed by the international board trying to work out some satisfactory arrangement with the dissatisfied employees, he had lost his employment due to the seniority structure, or no seniority structure in the contract.

Now, the history of the organization will reveal that that happened at every board member meeting, international board member meeting with the exception of the last one. There wasn't one grievance, notwithstanding there were dozens and dozens maybe, I would even venture to say hundreds of resolutions on seniority that went before the convention on seniority, in correcting that there wasn't one grievance on seniority at the last meeting of the international executive board.

Q I take it then your testimony is that this contract clause changed the seniority provisions from a classification, which meant the particular job the man was on, his classification, it changed the seniority from a classification proposition to a mine proposition of seniority at the mine?

A And qualifications to perform the work.

[3460] Q And qualifications. Now, to go back just a minute to the top of page 12 of this exhibit, I notice that clause was amended under the title "Discharge

Cases," page 12.

A Yes, sir.

Q Now, what change was made there and what was the position of the Mine Workers in the negotiations?

A Why, that was a very important change, although, well, on the face it appeared that there wasn't any change at all made. You would have to look at it very carefully to see that there is a very important change made in the discharge clause. Men were being discharged under the former contracts and it provided that if their case wasn't taken up and settled within a 5-day period that it was made null and void and many men were unable to get their cases adjusted in five days.

That was not the intent of the contract, but some operators, scrupulous or otherwise took advantage of it and the men lost their employment, but we corrected that this time by saying that the case would be taken up within the 5-day period without any limitations as to how long it was going to require to settle that grievance of the discharged employee, with one exception, that when it got in one step known as Step 5 of the grievance procedure of the contract, it is necessary that both parties agree upon the selection of an umpire for arbitration purposes
[3461] within a period of 30 days.

Q Now, on page 13 of this exhibit I notice the clause entitled "Bathhouse or Washroom." Is that a new clause or what did that mean?

A Yes, that is a new clause, that is a new clause, sir.

Q What was the position of the Mine Workers in connection with that in your negotiations?

A Well, the coal operators, not all of them, but a segment of the industry were charging their employees for taking a bath after they completed tneir day's labor

in their mine, and that was one of my pet grievances with the coal companies. I didn't think that that was proper down through the years from the time I worked in the coal mine. I was never charged for taking a bath and those people where I worked were never charged with taking a bath, the company provided bathhouses to the employees, and that has been one of my pet peeves. I thought that a man working in a coal mine for a coal company and made a profit for him, that is what they were there for, that the company, the least they could do was to give him a bath or provide for a bath for him or water to cleanse himself before he went home.

Q Did the negotiating committee for the operators, did they resist this demand?

A Very much so, yes, sir. One operator [3462] that I mention there, his name in particular, said that it was going to cost him considerable more than the increase in vacation pay. He operates in the South and he operates in the North.

Q In what way was it going to cost him, did he have to cut out the amounts that he was charging the people?

A Yes. He said that when we had tentatively agreed on a vacation increase of $25 for the year period and for the vacation, we had arrived and agreed tentatively all subject to the approval of the policy committee, of course, on a $25 increase, the operator at the negotiating table representing several large coal companies of this country said that he wasn't going to agree to it because it cost more for bathhouse arrangements than it did for the vacations, and I said to him, "How much more?"

Well, he said, "I charge my employees $3 a month for taking a bath."

I said, "That's $36 a year, is that right?"

He said, "That's right."

It doesn't take much figuring to figure the difference between 25 and $36, it would be more.

"Do you want to talk about the 4-dollar ones and the 5-dollar ones?"

He said, "I thought you didn't know about them or any of them."

I said, "I happen to know about the 4-dollar
[3463] ones, I happen to know about the 5-dollars. Do you want to talk about that?"

So we eliminated taking the bath, the charge for the taking baths, for 3, 4, and 5 dollars.

Q Now, I call your attention to page 13, the clause designated "Helpers." Was that clause changed and what was the position of the Mine Workers in connection with that?

A That is true.

Q In the negotiations, would you explain that, please?

A There was never a helper clause in the previous contract and the negotiators for the United Mine Workers thought that the helper was necessary and after a lot of exchange of argument, discussion and negotiations, why, this helper clause appears in the contract for the first time.

Q Did the operators resist your demands?

A Yes, very much so.

Q I notice on the same page under the title "New Machinery," what was the situation with reference to that clause or your position?

A Well, it was necessary to put the new machinery clause in the contract for the first time because of the introduction or new machinery into the industry between contracts and during that interim period, why,
[3464] the operators were inclined, most of them, to set arbitrarily a wage rate that was not commen-

surate, in our opinion, with the wage rates that should be applicable to the work performed and they had been doing that down through the years and then when the negotiations would come about, the wage scale negotiations would come about maybe a year, maybe two years, maybe three years would have elapsed and men working at those rates of pay arbitrarily set by the coal companies, there was no way of making any corrections after we negotiated a better wage scale for that particular machine, so we inserted in the contract this time that when new machinery is introduced not there now established and they are developing new machinery quite often or quite frequently, these manufacturers, when they buy this new machines, these local people have the right to sit down and make a contract for the proper wage rate negotiated with the operators, subject to the approval of the international president.

Q Now——

A (Interposing) I think that's what it reads.

Q Right. Now, I notice——

A (Interposing) International Union, not president.

Q On page 10, about your vacation payment. Was the vacation clause changed in the 1964 contract and, if so, in what manner and what position did the

[3465] negotiators take with reference to that?

A Yes. In all of the contracts on vacation period prior to the making of the '64 contract it provided for one vacation period. In addition to spreading the vacation period in the '64 contract, we also provided for a $25 increase in the vacation amount. In other words, it was $200, and we increased it to $225. I think it is spelled out, yes, it is.

Q Did the operators resist that demand?

A The operators resisted the $25. We never gave in on any of the demands without resisting them, but they resisted the $25 demand, but the change of the vacation

period was something that was first proposed by the operators. They were successful in showing to the Mine Worker negotiators the reason for having to have two vacation periods and that was that the utility companies that were burning this coal wanted a continuity of supply, that the operators who were putting this coal in a stockpile, in order to provide the coal during the vacation period, while all mines were down, it was costing them, someone said, I didn't figure it, but someone said it cost 15 cents a ton to remove it from the stockpile that they were preparing, that they would have without interruption the coal to power the generating plants of this country, and the Mine Workers Union, through its representatives, could see no advantage to discommode the operator to run the cost of production up an additional 15 cents when our people didn't enjoy anything from it, and it worked out very satisfactorily.

[3466]

Our people enjoy having split vacation in the manner that it is split. Everyone has their vacation and everyone has the same period of time off, but they don't have it within that period.

Now, another thing that the operators insisted on that they didn't get is that they wanted this to extend from July 1 until the month of October, and we were going to stretch out men being required, compelled to take their vacation any time at the will and the whim of the operator between the month of July to October, so we confined it to the one-month period and granted the right to have two vacations and it has worked out, as I said, very satisfactorily.

Q Was there any complaint made on the part of the operators that they were losing business to competitive fuels, like oil and gas, during this period of time when they were down?

A Yes, sir, that was mentioned and they did have

some proof in evidence that during the vacation period in the Midwest, in particular that I recall, in the Midwest they were unable, because all of the mines were down at the same time, to make the supply that was
[3467] necessary to those plants, and they moved into oil

Q Now——

A (Interposing) The generating plants.

Q Mr. Boyle, on page 8, under the title "United Mine Workers of America Welfare and Retirement Fund of 1950," was there a change made in this contract with reference to certain types of payments into that fund?

A Yes, sir.

Q And what was that?

A Well, this clause in the 1964 contract consumed considerable discussion, perhaps argument would be a better word, at the negotiating table because these coal operators that we were negotiating a contract with under the previous contracts were required to pay 40 cents a ton for all coal produced for use or for sale, they were buying coal and under the provisions of the previous contracts, why, they were buying coal outside their own holdings.

Q Under sub-contracting arrangements?

A Under sub-contracting arrangements, both outside of their own circle and within their own circle and they were buying that coal and as a result of it not working their own mines, displacing our people, bringing about shorter work-weeks for them and shorter paychecks and still holding our people subject to their call when the demand was there, greater demand, subject to being called at any time by the blow of the whistle, and
[3468] we did feel and still feel that the operators should not sub-contract that work out, that he should first give preference, if he is going to be in the coal business, to those people that he employs, and they

weren't doing that, and we asked that they pay 80 cents on that coal.

First we asked and our demand was of a dollar. We held for a dollar for a long period of time and the operators, about all of the opposition that I know that they could present at the negotiating table opposed the insertion of 80 cents into that clause. It was the closest thing, I suppose to bringing about a national work stoppage of anything that was discussed at the negotiating table.

Q You mean the dispute over the dollar and the 80 cents came closest to precipitating a stoppage?

A That is right.

Q I see.

A And we put the 80 cents clause in there.

Q Now, there is an exhibit here ——

A (Interposing) As a compromise we gave in on the dollar and gave the operators 80 cents, or they were successful in getting us talked down to 80 cents, but it was a dollar, the demand was.

Q Are you familiar with the clause known as the "protective wage clause" that was in the 1958 contract that is in exhibit here?

[3469] A Yes, sir.

Q Was that clause carried over into the 1964 contract?

A The protective wage clause?

Q Yes.

A It is not.

MR. ROWNTREE: We object to that on the best evidence rule.

THE COURT: All right.

MR. COMBS: I think the purpose of it, your Honor, is not to make any change or anything about what the contract says, I am just asking this witness who negotiated the contract.

THE COURT: Well, I think that each of the contracts are in the record at this time.

MR. COMBS: Yes, they are.

THE COURT: All right.

MR. ROWNTREE: Yes. We say the contract speaks for itself.

THE COURT: All right.

MR. COMBS: We agree that is correct. I was just asking the witness if that was eliminated.

BY MR. COMBS:

Q Now, Mr. Boyle, I have gone over several items in this contract. Were there other demands or [3470] proposals made by the Mine Workers that are not contained in this contract?

A Yes, there was perhaps as many demands, maybe even more that was presented to the operators that we were unsuccessful in negotiating into this contract.

Q Can you recall some of those demands?

A There was—one of them was paid holiday arrangement that we felt very, very keenly about, in fact, it was in the closing days of the negotiations between the operators and the Mine Workers that very reluctantly we gave up on the paid holiday clause. We did, for the first time, spell out what those holidays would be if and when they were ever successful in getting pay for holidays. I am hopeful that sometime we will be successful and there was numerous others. I think that I have got some notes on that, if you would like to know the demands on some of them.

Q Can you refresh your memory from any notes and tell us about that?

A Pardon me, Counsel, but I don't know that I have them with me. I have got some notes here with me. I don't know whether I have them with me or not. First we asked for greater consideration in mine safety. We asked for and received the 80-cent arrangement in the Welfare

Retirement clause that we talked about. The seniority clause was changed. We didn't get all we asked
[3471] for in the vacation arrangement of the contract.

We changed the settlement of the dispute clause of the contract, the discharge clause arrangement. We thought that there should be in the contract last time, and I think that there should be something in the next contract that provides for the severance of a man's employment in the industry due to any reason other than justifiable discharge.

Q Is that referred to in the trade unions as severance pay?

A That's right.

Q Does the Mine Workers contract, any of them, have any severance pay at this time?

A No, sir. There is numerous things along those lines that I don't have notes on, I don't recall them. I can get them, if necessary, but the coal miners of this country, his lot has greatly improved, it is true under the National Bituminous Coal Wage Agreement, but there is a lot of room for improvement for the coal miner who is required to mine the basic commodity for this country.

Q Now——

A (Interposing) It is our intention, it is our intention to try to get some of those things for them.

Q Now, Mr. Boyle, after you negotiated this contract as you have described here was this contract submitted to the policy committee for approval?

[3472] A It was, on the 23rd day of March.

Q And that is the policy committee that you have described heretofore in your testimony?

A That is right.

Q Now, was this contract reported then to the convention?

A It was.

Q And was it then approved by the convention?

A It was approved by the unanimous vote of the policy committee after some deliberations and discussions which pertained to why we didn't get more and——

Q (Interposing) Now——

A (Interposing) And then in the convention it was discussed thoroughly on the floor of the convention and received the unanimous approval of the convention.

Q Now——

A (Interposing) I believe there was twenty some hundred delegates.

Q Did the Bituminous Coal Operators' Association negotiate that contract subject to the approval of their people that they represented?

A The National, as I recall, the National Bituminous Coal Operators' Association empowered their negotiator with that authority because that was one of the first questions that I asked him, if he had authority to
[3473] negotiate a national contract. He said he had, but I noticed from time to time that they had their conferences, and I suppose, it's all supposition, I suppose they got approval from them, anyway, he negotiated.

Q In other words, the contract was subject to execution by the operator group?

MR. ROWNTREE: We object to the form of the question as leading and it calls for a conclusion.

THE COURT: Sustained.

MR. COMBS: I would like to read, by virtue of the stipulation on page 14, it is entitled "United Mine Workers of America, W. A. Boyle, President." These are the signatories to the contract we are talking about, these are the signatories to that contract.

THE COURT: All right.

MR. COMBS: First I would like to ask Mr. Boyle a question.

BY MR. COMBS:

Q The contract, Mr. Boyle, that we are talking about here that is in this exhibit, was this contract executed by the captive mine operators?

A They executed the captive mine agreement, yes, sir.

Q But it was a separate agreement?

A They were in on these negotiations and they agreed to this contract, yes.

[3474] Q But did they execute it, I mean, is it in this particular section? Turn to page 14.

A No, the captive operators are not listed in this group.

Q Now, I read from Exhibit No. 136, the signatories to the contract as reported to the convention.

A Page what?

Q By virtue of the stipulation we have.

A Oh.

MR. ROWNTREE: This we object to on the best evidence. I think the signed contract would be the best evidence as to the actual signatures on these contracts.

MR. COMBS: Now, your Honor, we stipulated to the admission of these contracts and these exhibits, and we have gone on the theory all of the way through here that these contracts were in this record by virtue of the stipulation we had with reference to these proceedings and counsel has asked and has put on his case on all of these contracts without any objection on our part on the theory that they were in these exhibits.

These are the printed signatories for both the union and operators.

MR. ROWNTREE: Yes, but——

MR. COMBS: (Interposing) We think by virtue of our stipulation that it is completely competent.

MR. ROWNTREE: I think that counsel is attempting

[3475] to thus use this page from these minutes for a purpose not contained on the page. I think it is pertinent as to the actual signatory representative of these parties. I think that counsel is attempting to put it in for the purpose of showing that each one of these coal companies or operator associations may have signed the individual contract, but I don't think that is the case, that each one of these companies did sign.

THE COURT: I believe I will overrule the objection and allow you to develop that on cross-examination, if you wish to pursue the matter.

MR. COMBS: The United Mine Workers of America: W. A. Boyle, President; R. O. Lewis, Vice-President; John Owens, Secretary-Treasurer.

District No. 2, John Ghizzoni; District No. 3, Ewing Watt; District No. 4, John L. Mayl; District No. 5, Joseph Yablonski; District No. 6, Adolph Pacifico; District No. 8, Elias Dayhuff; District No. 10, Sam Nicholls; District No. 11, Ernest Goad; District No. 12, Joseph Shannon; District No. 14, Henry Allai; District No. 15, Fred K. Hefferly; District No. 17, R. R. Humphreys; District No. 19, William J. Turnblazer; District No. 20, Thomas N. Crawford; District No. 21, David Fowler; District No. 22, Frank M. Stevenson; District No. 23, Neil Beam; District No. 27, R. J. Boyle; Dis-
[3476] trict No. 28, Carson Hibbitts; District No. 29, George J. Titlar; District No. 30, C. E. Beane; and District No. 31, C. J. Urbaniak.

Operators, Bituminous Coal Operators' Association; Central Pennsylvania Coal Producers' Association; Northern Panhandle of West Virginia Coal Operators' Association; Northern West Virginia Coal Association; Ohio Coal Association; Western Pennsylvania Coal Operators' Association; Amhurst Coal Company; Bishop Coal Company; Clinchfield Coal Company, Division of the Pittston Company, Consoli-

dation Coal Company; Eastern Gas and Fuel Associates; Itmann Coal Company; Oglebay-Norton Company (Brule mine); Omar Mining Company; Slab Fork Coal Company; Stonega Coke and Coal Company; Westmoreland Coal Company; Winding Gulf Coals, Inc.; Rochester and Pittsburgh Coal Company.

BY MR. COMBS:

Q Mr. Boyle, after the contract was negotiated and executed by the Bituminous Coal Operators' Association, were there other employer associations or individual companies who had not signed that contract that later executed it, negotiated and executed it?

A Yes, sir, by associations and by individuals, yes.

Q Would you name some of those associations?

A Well, the first one as I recall that signed [3477] the contract was the Southern Coal Producers' Association, there was the Southwest Coal Operators' Association, there was the Alabama Coal Producers, Indiana, two associations, Indiana Coal Operators' Association and many individual groups and companies.

Q What period of time was it that they were signing this contract after the BCOA?

A Well, they were conversant with what was going on in the negotiations and they immediately called me for a meeting with the negotiators of the United Mine Workers at which time we met with the Southern Coal Producers Association first and after negotiation had with them they met with their constituency, their full representation, I presume, and came back and signed the contract.

Q I read from Plaintiff's Exhibit 136 on page 14, continuing to read the signatories of the operators as follows:

"Southern Coal Producers' Association; the Kanawaha Coal Operators' Association; Ashland Mining Corporation; Beatrice Pocahontas Company; Boone County Coal Corpor-

ation; Cedar Creek Mining Company; Crystal Block Coal and Coke Company; Eastern Coal Company; Elkay Mining Company; Harman Mining Corporation; Imperial Smokeless Coal Company; Island Creek Coal Company; Cantland-Elkhorn Coal Corporation; National Coal Mining Company;

[3478] Premier Pocahontas Company; Princess Coals, Incorporated; Raleigh Eagle Coal Company; Redbird Mining Company; Wright Beaver Coal Company; Russell Fork Coal Company; Sewell Coal Company; Snap Creek Coal Company; Stevens-Elkhorn Fuel Corporation; Sterling Smokeless Coal Company; United Pocahontas Coal Company; Alabama Commercial Coal Operators' Association; Arkansas-Oklahoma Coal Operators' Association; Illinois Coal Operators' Association; Indiana Coal Operators' Association; Indiana Coal Producers' Association; Southwestern Interstate Coal Operators' Association; Western Kentucky Coal Producers' Association."

Now, Mr. Boyle, did you make a statement to the press shortly after the execution of the Bituminous Coal Wage Agreement?

A Immediately following the approval and the acceptance by the policy committee of the 1964 contract as submitted to the committee for acceptance or rejection.

Q Was this in a press conference?

A Then following that unanimous approval of the committee we had an open press conference by the operator representative making a statement following my statement, it was open to the public.

Q Is that statement contained on page 15 of this exhibit?

A Yes, sir.

[3479] Q Would you read that, Mr. Boyle, on page 15 of Exhibit 136?

A The statement to the press?

Q Yes.

A Reads as follows:

"We have successfully concluded another round of peaceful contract negotiations in the American Coal industry between the United Mine Workers of America and the Bituminous Coal Operators' Association.

"This is an historic agreement. Once again this union, representing the production workers of the bituminous coal industry, and officials acting for a majority of the soft coal operators, have demonstrated to the American people—and the people of the world—that free collective bargaining can and does work.

"Once more the responsible managers of our industry have sat in conference with the officers of this union and, on a rational harmonious basis, peacefully executed a joint agreement that is of benefit to the interests of both parties.

"It is to be especially noted that the government did not participate in our discussion. The government was not asked to take part. And the government, wisely refrained from interference in the normally functioning of the collective bargaining process.

[3480] "I wish to pay special honor to Mr. Edward G. Fox, the president of the Operators' Association, and his associates, and to my own associate officers, Vice-President R. O. Lewis and Secretary-Treasurer John Owens, for their part in the successful conclusion of these meetings.

"It is thanks to men of their caliber that we have and will continue to have labor-management cooperation and understanding in the nation's basic fuels industry. It is to be particularly emphasized that this is the fifth National Bituminous Coal Wage Agreement the parties have negotiated in the past 14 years without a major work stoppage.

"I would like you to note that, as in the past, the leaders of this union, and the managers of this industry have

reached an agreement that will benefit not only this industry and its workers but also the American public, the consumers of our coal. Economic stability is the keynote to progress in the Free World.

"Out great coal industry, more than any other American industry, is now and will continue to be the basic source of strength and power for our magnificent industrial society.

"This new contract amends the basic 1950 and 1952 National Bituminous Coal Wage Agreements. All other agreements are superseded.

"In brief, the new contract makes the following [3481] provisions:

"(1) A $2-a-day wage increase to be added, across the board, on all existing wages. Basic wages in the South coal industry are now $24.25.

"(2) A $25 increase in vacation pay bringing the total vacation pay to $225. Two-week vacations are provided in the agreement.

"(3) One helper shall be assigned to work with the operator on all continuous coal mining machines.

"(4) Time and one-half pay for Saturday work as such. Double-time pay for Sunday work as such. The coal operator has the right to load coal previously mined and processed on Saturday and Sunday at the premium rates.

"(5) Holidays, when worked, will be paid at the double-time rate. There are seven holidays designated in the new agreement: New Year's Day, April 1 (the annual celebration of the winning of the first 8-hour day in the coal industry in 1898), Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas. When one of these holidays falls on Sunday, it shall be observed with a day off on Monday. When one of these holidays falls on Saturday, it shall be observed with a day off on Friday. In both cases the premium rates shall be paid if the holidays are worked.

"(6) No charges shall be made for the use of wash-houses and washrooms.

[3482] "(7) Mine-wide seniority will be observed, rather than seniority by classification of work, i.e., the worker with the greatest seniority in the mine will be retained on the job in case of a layoff.

"The contract retains the so-called 'open-end' clause without a specific termination date. Under this agreement either party may reopen the agreement upon 60-days' written notice to the other party."

Q Now, did Mr. Fox make a statement to the press?

A He did immediately following my statement.

Q I read on page 16 of Exhibit 136. "Press Release, National Bituminous Coal Operators' Association, March 23, 1964.

"President of the Bituminous Coal Operators' Association, Edward G. Fox, today signed agreements with the United Mine Workers of America providing two increases totaling $2 a day, starting April 2, 1964.

"Vacation pay was also increased from $200 to $225.

"The agreements, effective April 2, 1964, are for two years, but could continue beyond that period unless reopened by either party.

"The agreement covering commercial operators provides for the payment of additional contributions to the Welfare and Retirement Fund when the operators handle

[3483] coal on which a contribution has not previously been paid. The association agreed to this union demand only to avoid an interruption of production of coal.

"At the time of signing, Edward G. Fox said:

"'Today's signing of a new contract between the United Mine Workers of America and the Bituminous Coal Operators' Association assures our coal-burning customer of another 2-years' uninterrupted supply. Since 1950, there has been a continuous supply of bituminous coal which has

come about by the Mine Workers and ourselves fully recognizing each other's problems and arriving at fair and equitable contract settlements. This has been accomplished without strikes or intervention of agencies outside the immediate coal industry.

"'President Boyle and his associates of the United Mine Workers of America have negotiated an excellent contract in behalf of the membership of their union, and I congratulate them.'"

Mr. Boyle, why were the negotiations first commenced with the BCOA rather than other employers or groups of employers? Now, I am speaking of the 1964 negotiations.

A Well, it was for two reasons, I believe, one being that it was more of a pattern to negotiate with the largest association in the industry and the second reason was because we negotiated the contract with the preponderance
[3484] of tonnage in the industry and they represented the preponderance.

Q Now, when you say "preponderance," would you have any approximation of the production that the BCOA represents?

A There's different figures, of course, that are given to that. The operator may have one and I may have another one, but my figures and the figures that the negotiators, I should say, have, the Mine Workers, Mr. Owens and myself had at that time, as I recall, were exceeding 60 per cent of the total production. As I recall, that was the figure that he and I used, the yardstick on the amount of coal that the Bituminous Coal Operators' Association represented.

Q Did that include the captive production tonnage?

A Yes. It doesn't include, of course, those associations or coal companies, and only those that are outside the Bituminous Coal Operators Association.

Q Now, you have mentioned here the Southern Coal

Producers. Would you have conducted negotiations with the Southern Coal Producers at the same time you did with the BCOA if they had requested or if they had been available to negotiate with you?

MR. ROWNTREE: Object to his leading.

A Would I have negotiated?

THE COURT: I believe I will overrule the [3485] objection.

A Well, I have, I would have been most happy if it could have been worked out that way. In previous years in previous contract negotiations we had the Southern Coal Producers' Association in joint conference with the BCOA associations, and the other Northern groups, but the Southern Coal Producers' Association selected, on their own initiative, to negotiate separately from the Northern group, and when I say "we," it would have been much more to my liking because one negotiation would have been all that was necessary, this way we had to go in to two. Yes, I would have been glad to have recommended to the policy committee and my associate officers that we negotiate jointly.

Q And you have testified that in the past that that has been done?

A It has, yes.

Q And the Southern Producers themselves are the ones that absented themselves from the conference?

A They had the right to do so, and they elected not to be represented in joint conference.

Q Now, the companies who were not represented either by BCOA or by the Southern Coal Producers, did you negotiate with them whenever you could meet with them?

A Well, I negotiated or we negotiated a contract following the Southern Coal Producers Association [3486] negotiations, we negotiated with the other groups, the other associations, and, as I recall from

memory, I believe the next one was either Indiana, two associates for Illinois, maybe Illinois was first, I am not too clear on that, but that's the way they followed in line and they came in separately, we met with them separately, we negotiated the contract with them and then we negotiated the contract with some of the larger coal companies who wanted to negotiate outside any association when they negotiate, and we negotiated the contract with them later, our national contract.

Q How were the negotiations and the execution of the contracts carried on with the companies that were outside of these districts, just what physical way did you negotiate with them with reference to meeting with them and setting up conferences?

A Well, those are the necessary things that you have to meet when you have negotiations with people that don't want to be affiliated with associations and in representing your people, why you have to meet with them for the purpose of getting a contract or negotiating a contract with them and it does cause a lot of extra work and time consuming, but you do sit down and you do negotiate with them and you do get more unreasonable demands perhaps from individuals than you get from a larger group, but you work them out, it takes time, but you do work them out, and the
[3487] contract is negotiated and signed.

Q Now, the contracts that you have negotiated subsequent to the March the 23rd and April execution along in there, have those contracts been the same, on the same terms as the National Bituminous Coal Wage Agreement of 1964?

A No different.

Q Now, did any employer or group of employers desire to negotiate different terms in this contract at different times?

A Yes, each and every one of them.

Q Can you identify some of them that negotiated with you on this contract?

A Well, I think the longest drawn-out negotiation with any particular large company after the signing of the National Bituminous Coal Wage Agreement that consumed more of the time of the international officers as negotiators perhaps was the Peabody Coal Company and the Illinois Coal Operators' Association negotiated with us for a considerable period of time.

I would like to say that all of this was done without work stoppages occurring during the interim period. In fact, there was no work stoppage that was brought about in the negotiations or the execution of this agreement.

Q Well, let me ask you this question that I should have asked a while ago: Can you, from your

[3488] memory, tell me whether or not that Consolidation Coal Company was a member of the BCOA?

A Yes, sir.

Q Was the Pittston Company, Clinchfield-Pittston Company?

A That is right, and I believe now that you mention it, that that is the other representative that was at the negotiating table.

Q Does Pittsburgh-Midway belong to this association?

A Yes, sir.

Q I am speaking of the Bituminous Coal Operators' Association. Does Pittsburgh-Midway belong to that association?

A That's Pittsburgh-Midway? Yes, I believe they are—I don't recall right now. Let me see, I believe they belonged to an association, but I am trying to think. Do you mean the stripping operations? No, I don't believe they do belong.

Q Pittsburgh-Midway?

A No, I am inclined to think——

Q (Interposing) You have already testified that Peabody doesn't belong?

A Peabody didn't belong, no, they didn't belong either, they negotiated to the Illinois Coal Operators' Association and they were outside the BCOA, that's right.

[3489]

Q Does Island Creek or West Kentucky?

A No.

Q Now, during the time that you were negotiating with Peabody, were their mines working at that time?

A Were their mines working?

Q Yes.

A Yes, sir.

Q Now, were the United Mine Workers at the time that you negotiated the contract, or at any time, have any agreement or understanding with the BCOA in the negotiations that in succeeding contract negotiations with other employers or groups of employers that the UMW would insist on the same terms as had been reached with the BCOA in the 1964 contract, did you have any such agreement as that?

A Absolutely not. We had enough difficulty getting them to agree with the contract; no, none.

Q Has it been the United Mine Workers' historical position to seek industry-wide uniformity in wages and working conditions?

A That has been historically so throughout the entire history of the organization.

Q Mr. Boyle, what position does the United Mine Workers take when an operator in negotiations claims that he isn't financially able to meet the industry standard of wages and working conditions, that he just can't pay that contract, what position does the union take in those negotiations?

[3490]

A The union in each and every utterance of the coal

operator with respect to his inability to pay has given great weight and consideration to that statement, notwithstanding that on an earlier interrogation of this witness I testified that I had been on scale committees from local union level up to the national office and I have my first time to recall that the operator had the ability to pay or meet any demand that we ever asked for. They always had an inability to pay.

Q He claimed?

A He claimed, but we knew differently. You see, we looked into these things a little bit, too, before we go into negotiations.

Q Now, is it possible for the union to determine actually the cost that the operator, whether or not his mine is efficient or what-not, is it possible for the union to have the necessary information to determine whether or not he is telling the truth, or if he is telling the truth what you should do about it?

A On his ability to pay?

Q Yes.

A No, I wouldn't go so far as to say that
[3491] the negotiators would be able to evaluate in every respect the amount that the operator would be able to give or that we would be able to negotiate with them, but we do have financial records of all of the coal companies that report.

Q That is, public statements?

A In their published reports.

Q Now, in your experience have you ever seen any occasion where the operator offered a wage increase or increased benefits without the union asking for it or demanding it?

A Never in my history or never in any time with the union have they ever offered gratuities.

Q Now, with reference to mechanization. You

talked about mechanization of mines in which you worked and all. Does the Mine Workers have a policy with reference to mechanization and production facilities of the coal mines, do they have a policy on mechanization?

A Yes, they have. They adopted a policy when machinery first came into vogue. The Mine Workers union, its leadership, have never opposed mechanization of coal mines. There's some question on automation or attempted automation, but they have not opposed mechanization of the coal mines.

Q Well, now, do they have anything to do with management's decision on whether or not or what [3492] type of equipment and machinery that management is going to use, does the union have anything to say about that?

A Absolutely none.

Q Have they ever tried to?

A Never have tried to or attempted.

Q Now, what about the policy of the union with respect to trying to organize non-union mines and organize the employees of the coal industry, do they have a policy with reference to that?

A Yes, we do.

Q What is that policy?

A The organization was practically founded on that principle of organizing the workers in the coal mines of this country because of the reason, of course, being for it and the history will reveal that the organization of the United Mine Workers is founded by the founding fathers of it over in Ohio and the sole purpose of it was to unite these coal miners into one organization for the purpose of organizing them so that they could better their lot.

In those days, as in some places in the present time, they are being exploited and they were being exploited in those days. When they got a union to represent them of

their own choosing, their own selection, why, they built in this country then the standards that workmen now work under and live under who are required to work in
[3493] the coal mines of this country, without that they wouldn't have.

* * *

[3506] Q Mr. Boyle, I ask you, do you now have or have you ever had, or anyone representing the Mine Workers, to your knowledge, any understanding or agreement with any employer or group of employers concerning prices or marketing of the product in the bituminous coal mining industry?

A No, I don't have any knowledge of any
[3507] officer, including myself, having any arrangements or knowing anything about the price arrangements. I have enough work to do to try to represent the employees of the industry without taking care of their market problems or price problems, and I have got plenty to do and I think I speak for my associate officers when I say that—I know I speak definitely for those that I am associated with—never at any time arranged price fixes. The closest that you could come to that is when we ask for increases and some of them, and all of them are complaining that they can't pay them, have to go out and get it.

Q Now, I ask you this question: Do you know or have you ever had or has any representative of the United Mine Workers, to your knowledge, an agreement or an understanding with any employer or group of employers in the coal industry to set wages or other employment standards at a level designed to eliminate another coal operator from the coal industry?

A No, that would be ridiculous to try to do that on the face of it, it would be ridiculous, we never have.

Q Is the United Mine Workers' position on wages

on hours and working conditions determined solely by the United Mine Workers, and is it based exclusively on what is regarded to be in the best interest of the employees represented by the United Mine Workers?

A I missed—I am sorry, I missed the
[3508] first part of your question.

Q Is the United Mine Workers' position on wages, on hours and working conditions, determined solely by the United Mine Workers? I will ask it in two parts.

A The wages are solely dependent upon the United Mine Workers to this extent, that when we are in negotiations we may ask for more than what the operators will agree to.

Q Well?

A But as far as the setting of the wages are concerned, we consider that that is our prerogative to ask for what we think that these people are rightfully entitled to and we do that.

Q Yes.

A We don't always get it, is that's what you mean, we don't always get what we ask for.

Q I think you misunderstand me. I asked, is your position, is the United Mine Workers' position determined solely by that?

A By what? By the setting of the wages?

Q Yes. In other words, does the operator participate in your determination on——

A (Interposing) Absolutely never nothing to do with that.

Q Now, is that position, do you base that position exclusively on what is regarded to be the best
[3509] interest of the employees who are members of your union?

A That's what they pay me for.

MR. COMBS: Your witness.

CROSS EXAMINATION

BY MR. ROWNTREE:

Q Mr. Boyle, I believe you stated that there are a number of places in the National Bituminous Coal Wage Agreement that could be improved upon?

A (Witness moves head up and down.)

Q That you have been doing a lot of thinking about, is that true?

A I didn't hear the last.

Q There are a lot of areas in which the National Bituminous Coal Wage Agreement as it exists today could be improved upon from the viewpoint of the miners, and seniority was one of these areas for many years, is that not true?

A (Witness moves head up and down.)

Q The problem of classification seniority has been a very hard subject in the discussions in the national conventions over some period of time?

A That is correct.

Q What would happen, for instance, were a mine, take a major mine of the country went from, say, conventional loaders into heavy continuous mining equipment, is it not true that there would be a considerable

[3510] layoff at the mine?

A Oh, yes, sir, I can very well vividly give you a yes on that answer, because I went through two of those large operations where they reduced their employment, that's right.

Q And——

A (Interposing) When they go from hand loading to mechanization, why, they do reduce them, that is true.

Q And is it not true that the company would gener-

ally seek the younger men in the work force to put them on this new machinery and escape the seniority problem under this classification rule?

A No, that doesn't always hold true, you see, sir, because the men who was perhaps older in years and older in seniority likewise is selected in many, many, many occasions in preference to the younger man because of his knowledge of mining and timbering and things of this nature. It is not all-controlling that a man has to be of a certain age to perform all the classifications in the mine.

For example, a miner's classification, perhaps the company would want to retain a man older in age than a younger man who would be—it would be always true that they would be inclined to want to favor the younger man on some of these high-geared machines, that is quite true, and they do that, and that was why a few minutes ago I mentioned about the training program, that you find

[3511] out who was qualified and who wasn't qualified to run those machines, but they didn't give them an opportunity, they ran them through, I say, like sand through a sieve, and that's what I told them, they didn't give them a chance, they wanted to bring in outside people.

Q And was that classification rule not a vehicle that let the big mines of the country to go through these stages of rapid improvement in the mechanization, go on to the next higher stage of mechanization?

A No, I wouldn't say so for this reason, that the operators in negotiating for seniority, we had no seniority in this country prior to 1952, and those places where we had seniority we had it in its limitations of classifications in some places, very few places had it on a mine-wide basis and the transition from hand loading into a classification arrangement was neither met with a great deal of approval on the part of the company and perhaps with not a great

deal of disapproval, that was a contract, as I said in direct examination, that we were told to get a contract, everything else had been agreed upon. We accepted the lesser of two evils. We accepted the classification seniority much to the regret of those men who went down the road, who are not protected under the seniority clause. Competent, capable, well-qualified men lost their employment in the industry because of classification seniority, but it was better than nothing.

[3512] Q That was what all of the fuss and furor was about at the conventions on a number of these occasions?

A Oh, yes, they brought that up and that is why the negotiators for the United Mine Workers, Counselor, were extremely interested to the point and to the degree that that was our first demand, so to speak, and it was the last one that was agreed upon.

Q And that was not agreed upon until you came to be the president of the United Mine Workers, isn't that true?

A Well, that—whether it's fortunate or unfortunate, that is true, yes. Maybe it was a time element, I don't know.

Q Now, you had after the 1950 National Bituminous Coal Wage Agreement you had amendments in 1951, 1952, 1955, 1956, 1958, isn't that correct?

A (Witness moves head up and down.)

Q And wasn't the great accomplishments of those amendments the increase in the wage each time and one time the increase in the Welfare Fund contribution, certain safety measures, the land-lease clause and the protective wage clause?

A (Witness moves head up and down.)

Q Is that right?

A If I understood your question, Counselor, you

[3513] asked me if those were the——

Q (Interposing) Principal items?

A Principal items. I think that we could say that the last three contracts prior to the negotiations of the '64 agreement provided only for '58 and '55, '56 agreement provided for the $2-a-day wage increase. The last three had $2 wage increases. I thought I understood you to say that one of the contracts dating back to the fourth or fifth provided for a $2 wage increase, it didn't do so, if my notes are correct.

Q I think that——

A (Interposing) Maybe I misunderstood the question.

Q The 1955 and 1956 and 1958 agreements all called for $2 two-step increases, is that not true?

A That is right.

Q Before that a $1.90 increase and a $1.60 increase.

A That's correct.

Q In addition to the 1950 increase of 70 cents?

A They are all in the contracts that are now in evidence, as I understand it from counsel, the 1945 contract started with a base there of $10 a day and in 1946 that was what was known as the Krug-Lewis agreement, they got a $1.85 at that time across the board.

On July 1, 1947, there was an increase of $1.20;

July 1, 1948, there was an increase of $1.00;

[351-] March 5, 1950, 70 cents increase; February 1, 1951, $1.60 increase; October 1, 1952, $1.90; September 1, 1955, $2.00; October 1, 1956, $2.00; December 1, 1958, $2.00; and then those are the three contracts I spoke of, and then the 1964 contract, $2, all of which were split in their increases, one taking effect on April and the other taking effect in January and the contract would show what the other dates were.

Q The Bituminous Coal Operators' Association was formed in 1950, was it not, after the 1950 contract?

A The Southern Coal Producers?

Q The Bituminous Coal Operators' Association.

A Yes, I believe that——I want to be sure and I don't want to be misleading——I think, though, that would be the date. I am not positive, but I think that is the date.

* * *

[3515] Q Mr. Boyle, do you recall that the International Union had a problem that it was seeking to have solved with respect to the inequality of the working time of the miners in the industry back before 1950?

A You mean about the short working time in the industry?

Q Yes, and the inequality of the working time of the various members of the union across the country.

A Well, that was one of our demands. Now that you have refreshed my memory, we wanted a short day and a shorter work-week in 1964. We asked for those things and didn't get them, if that's what you have in mind there.

Q And do you recall that Mr. Lewis back in 1948, at the convention of 1948, expressed the union's concern about that problem, talking about the overproductive capacity of the industry and the inequality of the working time, and do you recall that he stated on that occasion, "That if the operators of this country can't give any leadership on the commercial side of the industry, the United Mine Workers of America will and if there were only two- or three-days' work a week in the industry, we will all have the three-days' work"?

A That was a statement made, as I recall, at one of our conventions.

[3516] Q Yes.

A I forget what year it was. It is true that the statement was made by President Emeritus Lewis,

but it never developed into a reality.

Q Now, do you recall that in the bargaining sessions of 1949?

A The bargaining sessions?

Q Yes, sir.

A Yes, sir, I do.

Q In 1949 that Mr. Lewis, in one of the early sessions, if not the first one, proposed that the bituminous coal operators go along with the United Mine Workers in establishing a production control plan like the one that the union had sponsored in the anthracite industry?

A No, I have no knowledge of that.

Q I will ask you if you recall Mr. Lewis' words at the bargaining conference of June 23, 1949, "There has been much talk lately about a stabilization plan, much of it is affecting the Mine Workers and the operators. It has no basis of fact and cannot be considered practicable. It is true, however, that we do have a segment of the coal industry operating under a plan that brings about a distribution of working opportunity (and Mr. Lewis explained the plan that had been worked out in the anthracite industry). We would like to talk to you in this conference on some improvements and stabilization which is a ques-
[3517] tion of magnitude in the mind of the men as affecting the investment in the industry."

And in the paragraph before the one I was reading he stated that, "The Mine Workers have gazed at some degree with admitted apprehension at the tendency of the industry to reduce their prices in the face of increasing competition. Frankly, we think the industry has been too hasty."

Do you recall that?

A The industry what?

Q "Has been too hasty in reducing prices."

A Well, now, that is in itself a statement that you just read, Counselor, is an indication of the way the

officers and the negotiators of the United Mine Workers conduct themselves during negotiations.

There has been some question about that, as I understand. That is proof and evidence that he was reporting his progress or that the discussions with those people who would approve or disapprove of his actions as the president of the union with his associate officers during negotiations. That merely is a statement made of progress or no progress or suggestions offered to the coal companies, but it never developed.

Now, whether or not an allocation board in the bituminous industry is what we need, I am in no position to say today, I don't know. Perhaps it was a proposal.
[3518] There is many, many things that are proposed in negotiations, as you are aware, I believe, that never see the light of day, by both sides.

Q And is it not true that during the course of those negotiations over those many months there that the union did set some of these three-day work-weeks quite frequently in that period?

A Well, I wouldn't say quite frequently.

MR. COMBS: May I inquire if counsel is still talking about 1949?

MR. ROWNTREE: 1949 into 1950.

A There was a 3-day work-week and I don't believe that it created any undue harm to the industry. The "share-the-work" some call it arrangement, but under the circumstances I would like to say to you, Counselor, that I or my associates and I asked for a shorter work-week in the last negotiations and if you ever worked in a coal mine like I have, spent your lifetime in one of them practically, three days a week is too long.

Q And the operators objected to that very strenuously?

A Oh, Yes.

Q And——

A (Interposing) Just like they objected to the 8-hour day when we got it. They thought men should
[3519] work 12 hours a day and 14 hours a day, but we were successful in reducing that, not me but the union was successful in reducing it to an 8-hour day.

Q Yes, sir.

A And they were hopeful that some day mining this commodity that is so necessary to our economy and to the welfare of this nation that men will not be required to work the long arduous hours that they do work in coal mines.

This is a unique industry, it is an industry that if a 40-hour work week is the limit under the law for retail clerks and people of that nature who are on the outside working in other industries, then certainly a 40-hour week underground is much too long for those people who are required to be down there without the light of day and sunshine and things of that nature.

I think that the work-week and the work-day should be shortened. That is one of my aims. Now, the operators know that, but we are not letting any secrets out here today, they know that.

Q And haven't the members of the union at these conventions demanded that time after time after time in these conventions?

A Well, yes, they have. In fact, it's in our constitution and has been there long before, I suppose, I can remember that the constitution provides that each
[3520] year successive successor negotiations were to demand a 6-hour day in coal mines, and that has been demanded.

Q Yes, sir.

A But that became a part of the constitution long before I can remember.

Q Now, why hasn't the UMW been able to do something about that in these bargaining sessions since 1950?

A Well, you see, sometimes when you are on the verge of getting these things, why, those who ask you now why you don't do those things are the very ones that impeded that thing by getting government control or getting the government to step in and wield a big stick or something else to tell you to take what you were successful in extracting at the time. What happens to you, it never has disillusioned the president or his associates now in the attempt that we will make to shorten that work-day. That is not to say that we will get it in my lifetime, I am just hopeful.

Q Well, these people that you were negotiating the actual contract with, the Bituminous Coal Operators' Association, simply balked at shortening the work-day, didn't they?

A Oh, yes.

Q All right.

A They resolved, they revolted in everything that I know of, they never agreed to anything in negotiations.

[3521]

My experience with the operators in negotiating contracts with the labor union, that isn't only in the coal industry, that is true in all industry, the major industries of the country, you are only going to get that which is fair and just and that you are able to take, they don't voluntarily give you anything.

Q This was an area of negotiations where the major mines of the country were vitally affected, is that not true, because of their heavy investment in plant and equipment, with depreciation running constantly and——

A (Interposing) On the 3-day work-week?

Q On the shortened work-week.

A Short work-week?

Q Yes.

A Well, I would think that a man, a human being that is required to work in a coal mine, whether it's a

large mine or a small mine or a hand-loading mine or a mechanized mine or a semi-mechanized, that he is just as much entitled to a shorter work-day and a shorter work-week as anyone else.

Q Yes.

A After all, he is entitled to something.

Q We didn't have the problem of the short work-week in the hand-loading mine because the men picked their own time to work, isn't that true?

[3522] A No, that is not necessarily true at all.

Q Well?

A What happens there, we have a contract for an 8-hour day in those small mines that you speak of, why, that contract is expected to be lived up to just the same. You are talking about mines now that do not come within the jurisdiction of the United Mine Workers and they work them split shifts and that's true, they bring them out at 7:00 o'clock of a morning in the morning and then they work them an hour or two, whatever they want to down here, then they turn them loose like you do a waitress in a restaurant and say, "Come back when the business is good at noontime," or something of that nature. And they go home and they come back and then they say, "Well, we just ran out of cars. Go on home and come back again." And they are actually working about a 12-hour work-day or they are at the demand of the operator and his disposal for about 12 or 14 hours each day.

Those are the things that cause people to want to get into unions, you see.

Q You mean——

A (Interposing) Those are just some of them.

Q Because these men show up for work at the truck mine and the operator says, "We got no contract to sell the coal to anybody, so you will have to go home"?

A Well, that's one of the reasons. One of the

[3523] reasons might be that the boss didn't want to get up and go to work that morning, too.

Q Are you acquainted with the average working day of the hand truck mines in this coalfield in southeast Tennessee?

A It's a matter of record the government has got. I don't have them with me, but I can make them available to you, because the Labor Department has the working time of all of those mines.

Q Now, getting back to these major ——

A (Interposing) The Department of Labor has it.

Q Getting back to the major mines and their objection to the shorter work time or work-week.

This same objection was encountered in these 1949-1950 negotiations over Mr. Lewis' suggestion of the short work-week, is that not true, because of their heavy investment in plant and ——

A (Interposing) I wouldn't say that it was because of heavy investments, I would have no knowledge of his thinking on that, but I do remember that there was disturbance throughout the country with respect to work time and the policy on the demands at that particular time, as I recall it, ran to an equal division or a division at least of the work time by shortening the work-week. It didn't last long. I wish it had of lasted longer. I wish they had established a 3-day work-week in the industry.

[3524] I don't see anything wrong with it, but he was unsuccessful, as we all are unsuccessful, in establishing all the things that you like in a contract.

Q Yes, sir. So the union failed in its effort to stabilize this overproduction problem by its plan to shorten the work-week in those 1949-50 sessions?

MR. COMBS: Your Honor, I object to the form of counselor's question. He assumes a premise that has not been proven, that the union failed in its objective of

establishing in the industry a 3-day work-week. I object to the form of the question.

THE COURT: Well, I will let the witness respond if he understands the question.

THE WITNESS: I don't understand the question, your Honor.

BY MR. ROWNTREE:

Q Well, you recall the urging by Mr. Lewis of the consideration of the operators in the northern conference, particularly for the suggestion of a limited work time? Did they accept it or not?

A The operators?

Q Yes, sir.

A Oh, no, they did not accept it.

Q All right. Now, I would like to ask you as to whether or not you agree with Mr. Lewis on cer-

[3525] tain of his testimony, and I particularly speak on his statement in answer to the question, "It is a problem arising from an excessive amount of coal for the market?

"Answer. It is a problem of how the market requires in relation to the production capacity of the industry."

And speaking of this limited work time, the 4-day week or the 5-day week, he says, "It is widely advocated. It has been talked of in a number of industries now, increasingly it will be discussed if this economic situation does not improve."

MR. COMBS: I object to counsel's question. It is improper to ask a witness whether or not he agrees with another witness' testimony in a case, and I think counsel is aware of that. It is highly improper.

THE COURT: I believe that is somewhat argumentative. I believe it would be more appropriate to find out what his own views may be.

It is now noontime. Let's recess the trial of the case

until 1:00 o'clock and resume the trial of the case at 1:00 o'clock.

(Thereupon, at 11:57 o'clock, a.m., court was adjourned for the noon recess until 1:00 o'clock, p.m.)

AFTERNOON SESSION

1:00 o'clock p.m.
October 13, 1965

(Thereupon, pursuant to adjournment for the noon recess, court was in session.)

W. A. BOYLE,

a witness called at the instance of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION (continued)

BY MR. ROWNTREE:

Q Mr. Boyle, we were talking about this 1949-50 period of negotiations, and particularly the problems confronted by the industry at this time.

I will ask you if you recall that there was a work stoppage during this period about June 15, 1959, when the United Mine Workers called a work stoppage down in the industry to bring about a stabilization in the supply of coal, taking the position that a "divide the order," "share-the-work" program must prevail in bituminous coal?

A The last part of your question, Counselor, I didn't hear.

Q Taking the position that a "divide-the-order", "share-the-work" program must prevail in bituminous coal?

A Is that a statement at the convention, is that——

Q (Interposing) Actually I am ——

[3527] A (Interposing) What?

Q I am looking at Exhibit P137, the editorial page of the United Mine Workers Journal for June 15, 1949.

A And you asked me if there was a work stoppage at that time?

MR. COMBS: Just a minute, Mr. Boyle. I object to the form of that question. It is just too vague and general without any basis of giving the witness a chance to answer the question.

THE COURT: Well, the witness may answer if he understands the question. If he does not, he may state so.

A Well, I would have no recollection if there was a strike at this time. That's what the question was?

Q Yes.

A I don't recall that there was or I don't recall that there wasn't, but, now that you are talking about the stabilization of the work-week, I want to—or the short week you talked about there—those negotiations, Counselor, that you are talking about in '49 and '50, I had very little, if anything, to do with those. I didn't sit in on those negotiations on a day-to-day basis. I wouldn't know what transpired.

When you asked me about what happened in '49, I'd have to go back in the records and in my notes of what
[3528] was kept. You speak in 1949. I was only in Washington as assistant to the president a year and I wasn't in on those determinations and negotiations that you speak of, so it's most unfair to ask me what happened in there when I wasn't there.

Q I see. I take it that Mr. Owens was?

A Well, I would say that Mr. Owens' judgment on that and his memory would be better than anyone I can think of at the time on those things because Mr. Owens did enjoy sitting in on—I wouldn't say that he was in on all of the

'49-50 negotiations, no, because I don't know, I wasn't there. I was running back and forth from Washington to the Greenbrier, White Sulphur Springs, where the negotiations were being conducted. I was trying to keep the house running in Washington while they were negotiating and I was running back and forth and I missed a lot of those negotiations and while I was in the Greenbrier, why, I wasn't always called in there with the negotiators, because I, like I said, I was only there about a year and it wasn't expected that I would sit in that high a bracket.

Q There was very little of those negotiations that you actually attended?

A That's right. I know of no proposals that were made in writing—I know of no proposals that were made orally because I didn't hear them with respect to [3529] the 3-day work-week. The only 3-day or 4-day work-weeks that I am familiar with is the ones that I mentioned myself. They had nothing to do with what was going on at the time of the negotiations in 1949-1950.

Conditions change in coal mines like everything else. In a period of from 1949-1950 to 1964 where I had some responsibility to see what was going on into that contract, the philosophy and the thinking of the negotiators in 1949, whatever it was, that I am not familiar with, could vary from what they were in 1964 because, as I stated in the earlier testimony, this is a unique industry and it's unique and it changes, too, from time to time.

Q Well, can you recall back before 1950 the great amount of confusion and public attention at these negotiating sessions had?

A I think it's public knowledge and I think it is remarkable that we have achieved the impossible, so to speak, in the days that you refer to when we had to have a lot of fanfare, we had to have a lot of noise, we had to have

a lot of publicity in order to bring about a contract in the coal industry. That is known, that is public knowledge.

The thing that men can sit down now and fight with each other in argument behind closed doors without a work stoppage, I think is remarkable because so many, many times the government stepped in, you see, and
[3530] no one really profited by it. They stepped in after they said they were invited, whether they were or not, I don't think they were, but they said they were, why, sometimes you were compelled to take things like classification seniority.

Q Do you recall that back in those days that Mr. Love and his spokesman were saying that they were trying to represent hundreds of small coal companies?

A Do I recall Mr. Love saying that?

Q Yes.

A I never heard Mr. Love make such a statement, in fact, I can't recall that I ever sat with Mr. Love in negotiations.

Q Well, can you recall that a great deal of the confusion attendant upon those sessions was because the voice of the great numbers of small coal companies was being heard and enunciated in those meetings?

A I never heard Mr. Love mention anything about representing small coal companies.

Q But the Bituminous Coal Operators' Association was formed after this 1950 contract, is that right?

A Well, to give you the date I won't be able to do that, but that is my thinking, it was after that, yes.

Q And from that point on is it not true that the negotiations were carried on by 2-man bargaining teams, a man from the Bituminous Operators' Association,
[3531] Mr. Moses, and then Mr. Fox, and on the other side Mr. Lewis generally?

A No, that is not so. You see, when you are talk-

ing about President Emeritus Lewis, he had no more authority to make a contract on his own by himself with any individual than I have, and certainly I don't have that authority. The constitutional conventions don't extend that authority to me to make a contract by myself.

Q Well, let me ask you whether or not you agree with this statement of Mr. Moses.

MR. COMBS: I object to asking a witness whether he agrees with a statement. He can ask him if he knows about the statement or something like that.

THE COURT: Yes, I believe that would be somewhat argumentative to ask a witness whether he agrees with something that another witness may have said or done. You may inquire what his knowledge is or what his views are.

MR. COMBS: Whether he heard it or whether he knows about it.

BY MR. ROWNTREE:

Q Did you know about the 2-man bargaining teams that carried on the negotiations?

MR. COMBS: I object to that. This is counsel's 2-man bargaining business. This witness hasn't testified to anything like that 2-man bargaining teams.

THE COURT: He may answer the question [3532] and make his own answer.

A To the contrary, I don't think that there ever was 2-man bargaining conferences conducted. If you call discussions with two men negotiating a contract, then I suppose that they would, without my knowledge, may have talked with each other sometime or another, but the fact still remains, as I have already testified this afternoon, that President Emeritus Lewis finds himself without authority to negotiate a contract on a one-man team arrangement or basis, he is prohibited. We have a policy committee, we have a scale committee, and he has to report and

he has to work through them, the same as I do, in arriving at a contract.

Q Reading from Exhibit D134, page 302, the statement of Vice-President Thomas Kennedy. I believe he was your predecessor as president, is that correct?

A That is correct.

Q "In my talk to the convention yesterday in analyzing the report of the officers, I referred to the new techniques that have been engaged in for the past two years with respect to negotiation and the consummation of new agreements. Larry Moses, as president of the Bituminous Coal Operators' Association, and your president engaged in these conferences and negotiations in the making of the last several agreements, a 2-man negotiating team, and I indicated yesterday we profited immeasurably as [3533] a result of this technique in negotiations and in the consummation of agreements."

MR. COMBS: I might point out that the witness was questioned about 2-man negotiating teams. These are negotiating teams referred to here as representatives of the operator. What is he trying to do, test the witness' credibility, or what is the purpose?

MR. ROWNTREE: I was just reading from a book at that time.

BY MR. ROWNTREE:

Q Now, Mr. Boyle ——

A (Interposing) Do you want me to answer that?

MR. COMBS: I just wondered what the purpose of the question was. Maybe I am interfering with counsel's cross examining.

THE COURT: Let's proceed.

BY MR. ROWNTREE:

Q From that time on the negotiations were with the representative of the Bituminous Coal Operator's Association, is that not true?

A From that time on, what, Counselor?

Q From that time on the negotiations for the new contracts were with the representative of the Bituminous Coal Operators' Association?

A With the Bituminous Coal Operators,

[3534] but are you still talking about a 2-man team? I don't follow that question.

Q Well.

A I don't follow your questioning.

Q After 1950 were the negotiations in the formation of these national contracts with the representatives of the Bituminous Coal Operators' Association?

A I don't understand the question, I really don't. I am not trying to be evasive at all, I just don't understand the question, whether I am hearing all of it or not I don't know. I want to be responsive and I want to be helpful, but I can't answer something that I don't understand what you are talking about.

Now, what is it in 1950 that you want to know, Counselor?

Q I say, after 1950 were the negotiations for each of the National Bituminous Coal Wage Agreements carried on between the representatives of the UMW and the Bituminous Coal Operators' Association?

A At each? Now, I follow you. Now, at each successor contract, why negotiations were carried on with all of the various groups that I have discussed with you.

Now, the Bituminous Coal Operators' Association was one of those groups that we negotiated with or they negotiated with us, would be a better statement.

[3535] Q Is it not true, Mr. Boyle, that each time the so-called National Bituminous Coal Wage Agreement was negotiated first with the Bituminous Coal Operators' Association?

A In what year?

Q Each of the years, 1951, 1952, 1955, 1956, 1958,

1964.

A I don't know, I really don't, because there was sometimes when all of the operators were in there during that period. I don't know, I really don't know that. I can't say that just the Bituminous Coal Operators were there, because the Southern Coal Producers' Association was there and it is headquartered in Washington, and they were in and out of the building, whether they were negotiating I wouldn't know.

But each one was done with the Bituminous Coal Operators' Association by themselves and first, is that what you are saying?

Q Yes, first.

A No.

Q Do you deny that that is true?

A I don't know. I am not denying it, I don't know. I would have to go back in my records to determine whether it is so or not. There is no reason for denying, there is absolutely no reason to deny it. If I had knowledge [3536] of it, why, I would tell you.

Q Well, we just read here the statement of Vice-President Thomas Kennedy.

A Well, I want to say on that that when Vice-President— if you are reading from the document that I think you are reading from, it is a proceedings of the convention, is that right?

Q That is correct.

A All right. You didn't identify it so I didn't know that you would. Now, let me say this, that Vice-President Thomas Kennedy in making that statement at the convention, and rightfully and properly so, was talking to a group of 2,500 or more delegates, at which time everyone was somewhat pleased with the results of the negotiations and like Tom Kennedy was prone to do, he was giving great credit to the president of the organization for bringing

about negotiations that the team was in on equally as much perhaps. I wasn't there at the negotiations, so I wouldn't know, but I do know Tom Kennedy and I worked with him and I know that he was not a selfish man, that he gave a lot of credit to a lot of people, including President Emeritus Lewis, as it should be, there is nothing wrong with that, but he was talking to his delegates and he was telling them of the great accomplishments, just the same as I think if you will go through those same proceedings or
[3537] proceedings of the convention that proceeded that you will find where President Lewis gave credit to Tom Kennedy for doing those things.

Likewise, I made the statement, if you want to go back into the recent convention, and rightfully so, I gave great credit to International Secretary-Treasurer John Owens for the things that he did and the accomplishments and the assistance he was to me in negotiating the 1964 contract.

There is nothing wrong with that. That doesn't mean that we are sitting down in negotiations all by himself or myself making a contract with the coal operators of this country when the contrary is true. You are not permitted to do it. You cannot do it under the constitution. You can't do it and report to your membership. You have got to use the negotiating arrangements as set up by the constitutional convention of the United Mine Workers of America and President Lewis had no authority, regardless of what Tom Kennedy might have said in praise of him about the great accomplishments that he made, and he made many, and his contribution was great, but the same thing can be said about Mr. John Owens in the last negotiations and other negotiations that Tom Kennedy could have or Vice-President Tom Kennedy could equally have said, if he cared to do so, that International Secretary-Treasurer John Owens sat in these negotiations and then relate, if he wanted to, the accomplishments and his contribution to the accom-

[3538] accomplishments if he wanted to do that. He didn't do it. It is not to say that Mr. Owens, the secretary-treasurer, didn't contribute.

Now, those are the things that you say at conventions that don't necessarily hold that that is the way it was bargained and that is the way they handled themselves during the negotiations of the contract to give great praise to a man who is rightfully entitled to the praise and to the victor, so to speak, as they say, goes the spoils.

Why shouldn't he be credited with it? He was the president of the union and it doesn't infer and Thomas Kennedy didn't intend, in my opinion, to infer that John Lewis sat down by himself, made a contract, and that's it. Now, nothing could be farther from the facts of the matter.

Q I will ask you to check on this statement in the United Mine Workers Journal for April 1, 1955, page 11, which is P157, "Moses said that the new mechanism is for him and President John L. Lewis both with instructions from their members to get right down to bargaining and bypass the old fruitless joint wage conference."

A Yes, I understand what he means by that. Oh, yes. That was this fanfare I was talking about a little while ago where they had to meet out in the public and the negotiating committee and all of the rest of them would sit there with the public and listen to their headlines in the morning newspapers that there is going to be a

[3539] strike, they just said so, and you are sitting in the auditorium and you go through all that winging, they got away from that technique of negotiating contracts in the coal industry, and rightfully so, and properly so.

That is one of the arrangements I just talked about a few minutes ago that should bear me out in my statement that this is a changing industry, that this is a unique indus-

try, and that your methods and forms change from year to year. You don't always stay with the same method, the same system, so when it was necessary in the days gone by to have great big meetings with a hundred and fifty coal operators or two hundred of them sitting around and four or five hundred United Mine Workers and all of the public that wanted to get in there to listen to the fanfare that went on. They have went away from that. What is wrong with it?

Q You say it's not wrong to get away from the voice and the interests of hundreds of small coal companies and the men that work for those small companies?

A I didn't say that.

Q Well, isn't that what you meant by that long statement?

A That isn't what I meant at all. Those small coal operators, if they want to be represented, and many of them belong to the associations that speak for them.

Q You mean the Bituminous Coal Operators' [3540] Association?

A Or the local association, and the association itself is affiliated with the Bituminous Coal Operators' Association, that is true, it doesn't necessarily mean that a small mine belongs to the national or belongs to the Bituminous Coal Operators' Association as such, he belongs to them by virtue of being a member of the association in the state that he resides or operates.

Q In Tennessee?

A Well, there was a Tennessee, at one time there was a Tennessee association, there isn't any now.

Q Now, what about these other associations that were not part of the Bituminous Coal Operators' Association? How much bargaining opportunity did they have in the period after 1950 with respect to this national contract?

A What do you mean?

Q Will you define and characterize and describe the bargaining that took place after the National Bituminous Coal Wage Agreement was signed by the Bituminous Coal Operators' Association, what took place with respect to these other associations and these other small companies?

A Yes, I can tell you. After the negotiating committee of the United Mine Workers arrived at a tentative agreement and never, to my knowledge, never did the negotiating team of the United Mine Workers of America sign or make a contract that wasn't submitted for approval of the scale committee and the policy committee [3541] established by the constitutional convention.

Now, for anyone to say that any individual sat down and made a contract with a coal company or a group of coal companies or an association, I think I have some knowledge of that because I have been around a little while, and each and every one of those contracts that were negotiated, like you say, by Mr. Lewis and Mr. Moses, which is not factual, those negotiations were tentatively—if any of the features of the contract were tentatively agreed upon, they were subject to the approval of the policy committee, and I explained what the policy committee was, it's in the record, I explained what the scale committee was, and they had to receive the approval of those bodies before the contract was consummated and before it was signed, and I explained here this morning that after the approval in the '64 contract, as in the other previous contracts, the policy committee made the approval.

Why, I used to come from the far West as a policy committeeman for the sole purpose of sitting in on negotiations as a policy committeeman and approve the contract that was negotiated by the team of negotiators.

Q Well, let—

A (Interposing) That's always been the policy.

Q Let me ask you this, Mr. Boyle: Was it sub-

[3542] mitted for the approval of Mr. J. H. Graham and Mr. Howard Higgins and various coal mining companies in the State of Tennessee before it was executed?

A Now, you mentioned names that I am not familiar with.

Q They are plaintiffs in this case.

A They are what?

Q Plaintiffs in this case.

A Well, I wouldn't know whether they were under contract at the time. They are not under contract now, are they?

Q They are not now.

A Well, I don't know whether they had a right or whether they were under contract to ask for negotiations. Certainly I have no recollection that they ever asked for any negotiations.

Q Would you be surprised——

A (Interposing) It wouldn't have been denied them if they had of asked for them, I can assure you of that.

Q Beg your pardon?

A The right wouldn't have been denied them if they had of asked for negotiations.

Q You are not advised that there were negotiations carried on with respect to these plaintiffs?

A I wouldn't say there was or I wouldn't [3543] say there wasn't. I just don't have any recollection that these men, the names that you mentioned to me that are not familiar, you see, we only got thousands and thousands and thousands of these people under contract with us and I can't recall an individual's name unless I have at least met him. I haven't met these gentlemen you pointed to someone here, I don't know who you are pointing to here. They all look like attorneys to me.

Q Mr. Boyle, has anybody told you about the nego-

tiations down here in this coalfield in recent years?

A What do you mean by that? I think that there's negotiations that goes on from time to time when employees of a certain coal company, I think it is true, I think it is fair to say that throughout the entire United States and Canada, for that matter, that where men want to belong to your union and they petition us and they get certified that they sit down and they negotiate a contract. Yes, I have knowledge of that.

Q You were acting president in 1962, the latter part of the year, weren't you?

A That is correct.

Q And you don't know about the negotiations that took place down in this field?

A You would have to define more clearly to me what negotiations you are talking about. Now, I [3544] know you are not talking about the national negotiations because we didn't have any in 1962. In the latter part of that year you are talking about, I suppose, some man that comes in to business during the interim period of contracts and whether the negotiations took place, is that what you are asking?

Q No.

A If they did, why, they negotiated to the best of their ability a contract, whether they got one or didn't get one I wouldn't be familiar with it, I wouldn't know.

Q And you had no say-so about what took place in those negotiations?

A Only from the point of view that if they negotiated a contract that we would get the contract, it would come to the national office for approval, that is true, if they were successful in getting a contract, why, I would have to sign it.

Q Did anybody ask you about authority to bargain on behalf of the United Mine Workers in the southeastern

Tennessee field in the period of December and January, 1962 and 1963?

A I wouldn't remember. I wouldn't remember whether there was any negotiations going on at that time or not.

MR. COMBS: May I inquire if counsel is still talking about the bargaining with Mr. Ramsey and these other named individuals or are you talking about the

[3545] Sewanee negotiations?

MR. ROWNTREE: Of course, I am talking about the Sewanee Coal Operators' Association bargaining with the United Mine Workers in the period of December, 1962, and January, 1963.

MR. COMBS: You haven't identified that. You started out with Ramsey. It isn't clear. Are you still asking the witness about that?

BY MR. ROWNTREE:

Q Do you have any recollection of that?

A I wouldn't have any recollection, I wouldn't say that they didn't negotiate. I wouldn't want to go on record as saying that because maybe they did, but I can't recall it right now.

Q All right, sir. Now, after one of these National Bituminous Coal Wage Agreements is executed, that is for the entire industry, isn't it, Mr. Boyle?

A After we negotiated a contract?

Q Yes, sir.

A It's what?

Q That is for the use throughout the industry?

A Well, it can be used as a guideline, yes.

Q Well, isn't it a fact that you have one contract and only one contract since 1950?

A We would love—that is true, and we love

[3546] to think that we have a national contract, but for the record let's be fair about it, that when these

people sign the contracts they are not or they negotiate outside the negotiations that transpire on a national scale, they are not committed to this contract. Everything that is in the contract is negotiable, every paragraph of the contract is negotiable, and they do negotiate and they sit down and in most instances, I suppose disagree but it's negotiable.

Q But they always sign the National Bituminous Coal Wage Agreement, don't they?

A Because I suppose that they discover that that is proper and right or they wouldn't do it.

Q Do they have any alternative besides that national contract, Mr. Boyle?

A Well, they have, to my knowledge on numerous occasions negotiated, but they believed, as they should believe, the operators of coal mines, that a miner timbering in West Virginia is entitled to the same rate of pay that a miner is timbering in Illinois and the man timbering in Illinois is no different than a man timbering in West Virginia or Virginia, so they convince him.

I see you haven't been in negotiations, I see, but when you get into negotiations they convince these people that that is proper and right and then they sign the contract because it is not only a stabilizing instrument in [3547] the industry but it goes for the standards that these people are rightfully entitled to.

Q And this proposition is one contract and only one contract permitted by the United Mine Workers?

A This is not so.

Q Was finally put into writing in the face of the contract in 1958, wasn't it?

A What?

Q Was put into the face of the contract in 1958.

A You would have to read that to me, sir, I don't follow you.

Q All right, sir. Quoting from the 1958 contract, "During the period of this contract the United Mine Workers of America will not enter into, be a party to, nor will it permit any agreement or understanding covering any wages, hours, or other conditions of work applicable to employees covered by this contract on any basis other than those specified in this contract or any applicable district contract. The United Mine Workers of America will diligently perform and enforce without discrimination or favor the conditions of this paragraph and all other terms and conditions of this contract and will use and exercise its continuing best efforts to obtain full compliance therewith by each and all of the parties signatory thereto."

MR. COMBS: Now, if the Court please, I [3548] object to the question of counsel. He is asking this witness to give an interpretation of a written contract and I submit that the contract speaks for itself. Is counsel asking for a construction of the contract?

MR. ROWNTREE: That was not my question.

THE COURT: There isn't a question before the Court at this time.

BY MR. ROWNTREE:

Q Do you recall that that paragraph was put into the 1958 contract?

A If my memory serves me correctly, it is not in the contract. You are reading from the '58 contract?

Q That is what I am talking about, the 1958 contract.

A I don't question that that is the language, I didn't follow you, but if that is the contract, why, I couldn't deny or support it any differently than what it is written and signed and if it is there, it is there.

Q Is it not true that the National Bituminous Coal Wage Agreement amendments of 1950 on were designed to meet the abilities of the producers to engage in progressively and intensified mechanization?

A Mechanization?

Q Yes.

MR. COMBS: Again I object to counsel's question. He is asking for this witness to interpret contracts, talking about what they were designed for and I submit they are the best evidence and they speak for themselves.

[3549]

THE COURT: I will allow him to formulate his own answer.

A I don't see any encouragement to go to mechanization or to deny the right of mechanizing.

Q Has it not been frequently stated by the representatives of the United Mine Workers that it was the purpose of this contract for the workers to share in the increasing mechanization of the industry?

MR. COMBS: Object to that question. There is no time limit, there is no place, it is too general.

MR. ROWNTREE: Since 1950.

THE COURT: Overrule the objection.

A The question is that since 1950 we have what?

Q Have frequently stated as spokesman for the UMW that it is the purpose of these contracts to enable the workers to share in the increasing productivity and increasing yields from mechanization in the industry.

A Oh, yes, no question about we want to share, whether it's a mechanized mine or whether it is a hand-loading mine or a semi-mechanized mine or what-have-you, we think that we are rightfully entitled to share in the fruits of the production and the labor of these people when we represent them if the production is produced in this country we think we are entitled to our share, whether it's hand loading, I repeat, semi-mechanized, or fully mechanized.

[3550]

Q And that's what the contracts are designed to do?

A What does it do?

Q That's what these contracts are designed to do?

A Is to encourage the mechanization, is that what you are asking?

Q No.

A To do what, to give them their rightful share in the productivity?

Q That's correct.

A Why, it's public knowledge that we have always maintained and still maintain that the men who labor in the coal mines of this country are rightfully entitled to share in the fruits of their labor and if it's increased productivity we don't think that the lion's share should go to the one individual, it should be spread out to some degree that our people that we have the privilege to represent have a just right to demand an equal distribution or comparable to those that own the coal mines and operate the coal mines. As it has been said, the Almighty didn't put this coal here, and as it has been said, He didn't create a genius for the sole profit for one individual, be it coal operator or a worker, and because a man is endowed with a little bit more knowledge than another man, or he is more fortunate in having some capital to buy [3551] himself a pick and a shovel and a wheel-barrow or to go in business on any scale, is no right for him to claim the lion's share and not distribute some of it because this national resource is here, it wasn't created or put here just for one individual but it was put here to share among the lot.

Q Has it not been expressed by the national officers of the union that the contract is designed and tailored to meet the abilities of the companies to mechanize?

MR. COMBS: I object unless he is more specific about the time and the place and who said it.

THE COURT: Well, I will let the witness formulate his own answer.

MR. ROWNTREE: I could be more specific, your Honor.

BY MR. ROWNTREE:

Q I ask you if this statement is not true made by Mr. Lewis in 1956 at the convention, talking about the 1955 contract——

MR. COMBS: (Interposing) I object to asking the witness whether or not the statement is true. He can ask him if that statement was made.

MR. ROWNTREE: All right.

THE COURT: Sustained.

BY MR. ROWNTREE:

Q Will you state whether or not this state-
[3552] ment was made, "It is based upon the economics of a modernized industry. It is tailored to fit the future requirements of constantly progressive industrial techniques." Was that statement made?

A If it is in there and if it is in the proceedings of the convention, then it is reasonable that he made the statement. I don't just recall that he made it, on what date he made it, or what year he made it, and I don't know which proceedings you are reading from, apparently you are reading from some convention proceedings.

Q 1956.

A But I wouldn't argue with a printed proceedings, if that is the language that is used there it is there for whatever it is worth and what he said.

Q 1956, page 128. I will ask you, Mr. Boyle, do you agree with that statement?

MR. COMBS: I object to whether or not he agrees with it.

THE COURT: Yes, I believe we are getting back to the same type of question that has heretofore been sustained. Of course, he may state his views.

BY MR. ROWNTREE:

Q Mr. Boyle, would you not agree that different coal mining areas over the country accommodate
[3553] themselves differently to mechanization in the coal mining industry?

A Because of the natural conditions?

Q Yes.

A Geographical contours and locations? Why, certainly they adapt themselves to the method of mining that they are performing. Some of them are very poor in their selection of the method that they are going to extract the commodity in, but that is their business, that's a managerial—that's outside of the realm of the union, that is up to them.

Q There is no contract, no alternative contract presented to take care or to adjust these differences?

A Well, if you want——

Q (Interposing) In these various coal seams?

A Well, Counselor, if you want me to say that the United Mine Workers should gear their demands and that we should use as a format those who are operating wagon mines, as you are talking about, or small mines, truck mines, or whatever they are, and that we should formulate the demand on the ability of those people to pay as a yardstick as to what we should ask for the entire industry from the States of Alaska to Alabama, from New Mexico to Pennsylvania, why, I couldn't agree or disagree with you more.

Q That is not what I am asking you, Mr. Boyle. I am asking you not for a contract over the country, a national contract based on the ability of the southeastern
[3554] Tennessee field. I am asking you do you present a contract for this particular field by itself which accommodates itself to the abilities of the companies in this field in their circumstances in this field.

A The answer to that would be those operators who

are interested in having a contract with the United Mine Workers of America are given every opportunity that I know of to sit down and negotiate a contract with the principals or the officers in those areas. That is not to say that each one must agree with the other just because they sit in negotiations and, as you have previously stated, they always come up with the National Bituminous Coal Wage Agreement. So what is wrong with that if they were successful in negotiating on a local basis the National Bituminous Coal Wage Agreement, isn't that good for the industry? Isn't that good for the small as well as the large? Why isn't that a healthy thing?

Q You mean when they can't operate under it?

A You didn't say anything about not operating under it. I don't know they can operate it or not, you haven't proven that to me, whether they can or not.

Q Well, have the international officers ever really concerned themselves as to the ability of particular areas to comply?

A My answer to that, sir, would be that every coal operator in this country, large or small, can operate under this National Bituminous Coal Wage Agreement if there wasn't some connection with that small coal operator designed to sell his coal cheaper than the cost of production of the larger coal operator of this country, and that is exactly what they are doing, if they would demand and stand up and fight for the price for the coal that they are rightfully entitled to, which is recognized both by government, by the public, and by the people in the industry, unionwise and companywise, every coal company that are now complaining that they can't live under this contract could live under it, but they don't do that, you see. They are anxious to be in the coal business, a great many of them, when they don't know how to operate a coal mine, that's number one.

[3555]

Number two, they enter into some kind of an arrangement with the larger coal companies of this country whereby they sell their coal to them cheaper than what is necessary for them to do in order to have a market for themselves. They do that for selfish reasons, because they stay in the coal business that way and if they didn't sell to them cheaper and didn't sell it to the larger producer cheaper, why, then, your mines in the larger producers would be working more regularly, but they get a cut-rate price on you, you see, on it, when they sit down and enter into these arrangements one with the other. The union is no party of it, the union has nothing to do with it, the union is left out. If we were there we would
[3556] tell them, "Look," if we had a right to say to them, "You are selling your coal too cheap to them. All you got to do is stand on your hind legs and ask for more and you will get it." But they won't do it, they want to be in the coal business.

Q These individual operators who are trying to stay alive selling coal cheap, is that the idea?

A Why, certainly they are selling their coal, they are selling their coal presently to large coal companies of this country below the cost of production in the larger mines that you are talking about so much about being mechanized. Do you believe that? What they are doing, the large coal company can't produce coal with their mechanization, with their mechanized mine as cheap as they can buy from these people on their leases and everything else they have got with the arrangements that they have with them, that is their problem. It isn't the union or the union contract. The union contract is more of a stabilizing instrument, but they don't want to live up to that after they sign it, they want to go around the back door, I suppose, and sell their coal cheaper and then the sufferer of that is those who are accused now of a con-

spiracy. They are the people who are being accused and they are the sufferers.

They suffer to the extent that they don't enjoy the American standards of wages or conditions or
[3557] safety measures or anything else of this country that they are rightfully entitled to, those people that are working in those mines, and I hope I live long enough to see every one of them under a contract where they enjoy those privileges. They are rightfully entitled to them. That is the humanitarian way of thinking and it is the human element with me that comes first, profits, machines, notwithstanding.

Q Let me ask you this, Mr. Boyle, how is this small coal operator going to stay alive and get adequate prices for his coal and comply with your national contract, how is he going to go about doing that?

A Well, you see, it's well known, I don't think there's any great secret that if he wants to and instead of cutthroat methods that are used in the small coal industry, if it is an industry, that segment of it, at least, as I said before, if they would demand and receive the price for the coal that they are rightfully entitled to they could meet all of the demands that are in this contract, they wouldn't be using it as a vehicle to say that they are going out of business because of the National Bituminous Coal Wage Agreement, but being human beings and being individuals, he opens up a mine over on this side of the hill and they learn the day after tomorrow that his friend or neighbor opened up one across the valley and then it's a cutthroat arrangement as to when the big fellows show up on Monday,
[3558] he says, "I just made arrangements over here, so I am told, to buy the coal over there for two and a half. What do you say to that?"

And it's an auction arrangement. If you want a sale for your coal you have got to cut it down to two dollars.

If you don't cut it down to two dollars maybe somebody will hear about your leases. Did you ever hear about those things?

So they enter into those arrangements and then they want to blame this union for conspiracy. I think it is a ridiculous thing to begin with.

Q Do you think that these small coal operators ought to get together?

A I think these small coal operators ought to be represented by someone with intelligence that knows enough and how to extract from these people the rightful price, the price that they are rightfully entitled to, and then they wouldn't be any question about the National Bituminous Coal Wage Agreement driving them out of business. You make a contract and if we geared it to two dollars a ton, then the next thing you know it is $1.85 a ton, there's no end to it. That is why they had to pass the Guffey Act, you know. That is why they had to pass that, because the coal operators of this country, large and small, were committing hari-kari and cutting their own throats, so what they did do, they came to
[3559] the union and asked for some aid and assistance, as the record will show, and they went over to Congress and they passed what was known as the Guffey Act. What was it passed for? They set up regions throughout the United States, and the Guffey Act, a controlling act, told these coal operators, large and small, what you can sell your coal for in the open market.

Why did they have to do this? They had to do that because they were cutting their throats and committing suicide. So the law was passed. It stabilized those prices in those various regions. The union wasn't trying to drive anyone out of business then, they were trying to stabilize and they were somewhat of a factor in that. I wasn't one of them, but I understand the senior officer of

this organization joined in that, was as helpful as he could be to the coal industry, large and small.

They have got away from that now that the Guffey Act is no longer on the statutes, so they got away from it and they are back to the old days of the jungle where they are killing each other off. We can't be responsible for that.

Q Isn't——

A (Interposing) They are not only in trouble with the large coal operators, they are in trouble with each other.

[3560] Q Isn't that what the union was talking about back there in 1948 and 1949, the UMW was the only stabilizing influence in the industry and that if the commercial operators couldn't take care of the commercial side of the industry, the UMW would?

A Well, I wasn't a party to that and I wouldn't know about that. If they did, why I am not saying that it was improper or proper, I will say that in the year of our Lord 1965, why, conditions may have changed radically from what they were then. I wouldn't try to compare them economicwise or otherwise or stability-wise or otherwise, I wouldn't know, but as one of the principal officers of this union, and not being familiar with what their thinking was in those days, I am not in a position to tell you that they thought this or they thought that or they did that or they did this, I wasn't there.

Q All right, sir. Is it true that this industry has peculiar problems arising from the great number of small companies engaged in the business?

A Engaged in the business?

Q Yes, sir.

A Causing me great trouble?

Q Causing instability in the industry.

A Well, I don't think that it is a health condition when you find a group of small coal operators competing

[3561] one with the other on a cutthroat method of selling their coal to people that can't afford to pay more and they are not getting the price that they are rightfully entitled to because they don't suffer about it, you see, they still take what the profit and losses show, they always appear in the profit end of it, the one that appears in the loss column is the worker that we try to represent, he is the one that is losing.

Q Now, Mr. Boyle, getting back to this circumstance of particular coal-producing areas being different in the working conditions that confront them. Is it not true that some of the thin and irregular seam areas take place up and down the Appalachians?

A It varies in different seams.

Q Is it not true that some of these areas where these conditions exist have been tied to the bituminous coal industry for decades in their way of life?

A They have been tied to what, Counselor?

Q Tied to the bituminous coal mining business in their whole way of life for whole decades.

A Well, if you would ask me if these people in the region that they would be similar to the people in all regions where the coal mining or coal mining habits are such that three generations, I suppose each generation follows one and the other and it's people like myself, I suppose, that have been coal miners, that have
[3562] moved from area to area, I suppose that they are in the minority, would I say that it is factual that they stay in the region where they were raised?

Q But it's true that some of these areas of the Appalachians are primarily devoted to and tied to the mining of coal?

A Oh, yes.

Q Now, is it not true, Mr. Boyle, that this National Bituminous Coal Wage Agreement by these successive

amendments since 1950 has had a great effect on the unemployment picture in the Appalachians?

A Has had a great what?

Q Effect on the unemployment picture in the Appalachians?

A The contract is responsible for the effect? I don't follow.

Q Yes.

A What effect?

Q That's the question.

A What effect?

Q In forcing out of the industry areas of thin seams, areas not accommodative to intense mechanization, forcing those areas out of the industry, leaving the miners and the operators out of work.

[3563] A That is not necessarily so and you can't contribute it to the size of the seam because if you are familiar with the analysis of coal, we are all expected to be in the coal industry, you will find that the lower seams bring a greater price for their coal than the larger seams and that they do stay in business and always the inferior seams you talk about as being small seams, not necessarily does it hold in all cases that they are driven out of business because they are a small seam mine, they get more for their coal, the demand for that type of coal, the requirements for that type of coal, they get more for it if they demand it, but, of course, they can go in and give it away if they want to, and the United Mine Workers can't do anything about it.

Q You are not saying that the coal business has been real splendid in the Appalachian area in the past few years, are you?

A I wouldn't say it was due to the National Bituminous Coal Wage Agreement that it is in the condition that you say it is. There's many other facets and factors that enter

into the picture that you are now not disclosing to me that I know about, you see, because I spent a lifetime in this industry.

Let me say to you, Counselor, that the National Bituminous Coal Wage Agreement cannot be a contributing factor of driving these people out of the industry only
[3564] when they want to use that as a vehicle to state to the public and cry elsewhere that we are driving them out.

Now, you talk about the unemployment, you mentioned it, but the unemployment is not completely and solely responsible or mechanization of these mines and the bituminous coal contract is not solely responsible because it has been said over here in the great coal-producing state of West Virginia that one time led the nation in production, there's 40,000 unemployed coal miners in that state due to what? Not mechanization. It has been said on the record because of the importation of substitute fuels that displaced those people. So you can't ask me if all of the factors and facets connected with unemployment in the Appalachian area is responsible in controlling the negotiation of the National Bituminous Coal Wage Agreement, because it won't be factual, it won't be reasonable, it wouldn't be sensible, it would be ridiculous to contribute to the contract the unemployment solely because we made a contract that gives to the worker in these coal mines the American standards of living that he is rightfully entitled to, and I don't think he has reached his peak.

Q Would it not be helpful to the unemployment picture if a different kind of contract was presented alongside the regular National Bituminous Coal Wage Agreement which could accommodate itself to the hand-loading
[3565] truck mines of the Appalachian area?

A Well, I don't know whether the Court wants me to go into it or not, but in answer to

your question, Counselor, I will say that the next time we have a go-around on wage scale negotiations you come around and talk for these people and we will see if we can't convince you that the guidelines should not be on the ability of some man with a particular pick and shovel and one mule and a wagon or something of that nature to set the basic wage rate in this industry. We don't believe that. I don't believe it, and you come around and convince me and maybe then we will tell these large corporations that you don't have to pay anything, only on the ability of one mule or something of that nature or one car.

We are not going to gear ourselves, we never have. We think that these people can for every ton of coal that they extract, for every ton of——

Q (Interposing) Let me ask you this.

A Every ton of coal that they can get the going price for it is they ask for it and demand it and they can pay what is paid under this National Bituminous Coal Wage Agreement.

Q Mr. Boyle, do you have to convince these big corporate interests on this problem of giving an alternative contract?

[3566] A Never in the history of my experience, never to my knowledge has a coal operator, large, small, intermediate or otherwise ever cried anything but the blues at the negotiating table of their inability to pay or give anything, that has been the history of the organization ever since I can remember. Tremendous profits made by these companies, they will still tell you they can't do it, they can't meet it, but when the financial returns come out and when the quotations are made you find the tremendous profit that some of them have made, the very same people that say they can't afford to give to the worker in the coal mine a reasonable American standard of living or American standard wage.

Q Well, I am not talking about the big corporate interests, I am talking about the small truck mines, whether it be mechanized or hand loading.

A Are you talking about the ones that are leasing property from the large coal operators?

Q Yes, largely those.

A Well, don't you think then rather than to accuse the union of any unfair dealings, conspiracy, as you call it, or what-have-you, that it might be well for those small coal operators to go to those people from whom they lease their properties and mine their coal and say, "Look, we don't think you are right with us when you ask us to operate out of this mine that we have below the cost of production at your mine just for the sole purpose of profit?

[3567] We have to pay these men something to live on, we do have to meet some form of fringe benefits," I suppose that is in that contract, "and we do want to operate. Now you are going to cancel my lease, is that what you are going to do if I don't sell it to you?"

Don't you think that they ought to have an organization like the United Mine Workers representing them then?

Q Well, that may or may not be.

A Somebody ought to go and tell them it's not fair. You wouldn't say to me today, would you, Counselor, that we should gear ourselves to some coal companies, large and small, who want to buy coal below the cost of production, that we are going to agree or be a party to that so that our people are denied the rightful wage that they are entitled to? And I resent, in Tennessee or elsewhere, by implication, by statement, or otherwise, when they imply that the officers of this union in the past or present entered into any side "sweetheart" agreements. That seems to be a token word down here and I deny it. They can't prove it. It has never been done and no contract has ever been signed by President Lewis, President Kennedy or by Tony

Boyle that provided for anything other than what the basic contract provided for and there was no "sweetheart" arrangements, and I want to tell you, Counselor, today that those people who make those statements are
[3568] either ignorant of what is going on or they are certainly destitute of a factor known as truth.

That is the way I feel about it and I am going to say again that whenever anyone can get out and openly charge a union with the reputation that the United Mine Workers of America has, and I expect to attain in my lifetime, I expect to attain no honor greater than that of being the president of this union, I don't know what can be conferred upon me that I would consider a greater honor than being the president of this union, and then to have someone not familiar with the industry, or familiar with it, saying that I would be a party to denying these people what they are rightfully entitled to by some conspiracy, or that I entered in to drive some of these people, these ex-coal miners out of the coal business. You are forgetting, Counselor, a lot of these people that are in the coal business, in the small coal mines, they are not all in Tennessee, some of them belong to this union, some of them are being protected by this union.

Q But not all of them?

A No, because they don't elect to belong to the union, only because they don't elect to belong to the union. I have no bar against small operators in Tennessee, none whatsoever, but I do resent and I will resent as long as there is a breath of life in me that we would be a party to any side arrangements or any conspiracy with the
[3569] coal companies of this country when, to the contrary, the facts proved otherwise, and that is that we have been ridiculed, we have been condemned, we have been called everything under the sun in times of stress and duress because we were forcing upon these people a

contract, I'm talking about the large operators, now, we enter into some kind of arrangement with those same people. Yesterday they were our enemies, so to speak, today they are our bedfellows. Nothing could be farther from the truth.

The coal operator is a coal operator, large or small, as far as I am concerned, and as long as he employs people that belong to this union I will meet him, I will meet him on even terms, equal terms, for the sole purpose of protecting the rights and the benefits of men who are employed in the coal mines of this country are rightfully entitled to and you tell them for me, Counselor, that I resent for my associate officers, for the membership that I represent, any charge that we would be a party to driving any coal miner or small coal operator out of business.

That is the most ridiculous and asinine thing that has come up in recent years in the coal mining history.

Q Well, Mr. Boyle, I'd like to know why you resent so much the idea or the publicity that the United Mine Workers tolerates "sweetheart contracts," why do you resent that so much?

[3570] A Because it is not so and if it is so I have no knowledge of it and if it is proven to me I will correct it. That is why it is just not being done and people who are not familiar or conversant with what is going on in this industry get out and wave their arms like Dutch windmills that this union is to blame for everything that happens, whether a coal operator goes broke, is very well-to-do, we get no credit if he makes a tremendous profit, as the record will show, they don't give us any credit for that, but every time someone folds up and goes out of business because he doesn't know how to operate a coal mine, why, then the United Mine Workers are to blame for it.

If you know some "sweethearting," you let us know, let us know about it.

Q Well, has the Bituminous Coal Operator's Association told you about some of those things?

A Told me in what way? What do you mean, told me?

Q About some of the "sweethearting" that is going on in the industry.

A No, I have no knowledge of them telling me that there was "sweethearting" going on. You read it in the daily newspapers and that is what I resent. Why don't they come and tell me about it? Why don't you put some proof on the table? Why don't they say that this is going on

You see, I can only be in one place at one time,
[3571] and I am mostly in Washington. Now, if that is going on in the State of Tennessee, why don't they come in with the proof that it is going on?

Sure, I can say that Attorney Rowntree is a lot of things, but that doesn't necessarily make it so.

Q I hope not, Mr. Boyle. Have you heard about any studies in the State of Kentucky with respect to the cost of operation of truck mines and the kind of a wage that has to be paid in order to come out on the market price that exists?

A Now, you see, you can't use the same yardstick for all of those mines, they vary, they are somewhat different than the larger operations. For example, in a large mine that has a 4- or 5- or 6-foot seam, if he uses certain type of equipment then you get into the values and the equations and you work it out, you can pretty well determine throughout the industry on the basis of that, where in a small mine you run into different factors that I wouldn't know. I haven't made an attempt to know. I suppose that the answer to that would be that they are individuals, they are operating small mines. If they get the proper place they get the price that they are rightfully entitled to for that coal, that they can meet the American standards of living, namely, the National Bituminous Coal

Wage Contract requirements.

Q Have you ever heard about the spinel top research report for the State of Kentucky?

[3572] A Which one?

Q The spinel top research institute, you ever heard of that?

A I don't know if it is the same institute of research, I don't know, I don't recall, I don't have any knowledge of that one. If I am not supposed to know, why, I can't remember it right now.

Q Well, now, this national contract has had a tendency to increase the stripping operations in the country, has it not, as opposed to the underground operations?

A Well, that can be answered two ways also, that strip mining has come in the volume in more recent years, but it is not necessarily so, you know, that it drives out the underground mines because I am thinking now in terms of a company that has a deep mine bid against the strip, large stripping operation. The deep mine on the price arrangement was successful in getting the bid, notwithstanding that they were a deep mine, so you can't always say that every strip shovel that goes into operation is an instrumentality that will drive out of the industry a large or small deep mine because that just is not so.

Some of these deep mines now are becoming quite efficient, as you may know, and they compete with the overburden that has to be removed in some of these mines and some of these stripping operations can't compete in certain areas of this country, they can't start

[3573] to compete with the deep mine operation.

Certainly if they only to remove a small amount of overburden and they don't have to follow all of the other factors that enter into the removal of the overburden before the coal itself is extracted, why, all of those are factors

that enter into the lower cost of production, but that doesn't hold true throughout the industry.

Q Well, it has been true that stripping has greatly increased in proportion to the underground mining?

A I stated that to my knowledge, to the best of my knowledge, at least, strip mining has increased a great deal in the West, the Middle West, and in the East and in the South it is a new method of mining.

Q Do you recognize that stripping shovel?

A Oh, yes, I recognize it as being a shovel without even putting my glasses on. I recognize it as being one of the exceptional machines in the industry and one of those that looks like to me as though I was in one time.

MR. COMBS: Would you mind identifying the shovel he is talking about? Is that an exhibit in the record?

MR. ROWNTREE: No, that is not an exhibit.

A Yes, I know that shovel and they have got shovels- sure, I know that shovel.

[3574] Q Is that the Peabody shovel up at Paradise?

A I would say it is, looks very much like it, and the name "Peabody" appears on the machine in large print there and in the location as I know it, I was only there once, it looks like it is the Paradise operation, yes.

Q That's a 115-yard bucket shovel?

A I forget what the capacity is, but I do know that at one time it was rated, I believe, as the largest or one of the largest shovels in existence.

MR. ROWNTREE: We would like to enter that as the next exhibit.

MR. COMBS: May I see it?

BY MR. ROWNTREE:

Q Mr. Boyle, do you know who makes that shovel?

A I don't know whether that is a Bucyrus or not, I think it is, I am not sure, could be a Bucyrus-Erie, I

don't know.

MR. COMBS: Of course, your Honor, we object to it as being completely immaterial and irrelevant to this case, it's a newspaper picture of a shovel.

THE COURT: I am unable to determine the relevancy or lack of relevancy at this point of the examination. I believe I will overrule your objection. Exhibit No. 367.

(The newspaper photograph referred to above was marked P367 and received in evidence.)

[3575] BY MR. ROWNTREE:

Q Is it not true that what is encouraged by the tendency of the national contract has had a bad effect on the safety in the big mechanical mines?

MR. COMBS: We object to that question. Counsel's question is premised upon the assumption that he hasn't proved, he said a tendency of the national contract, which the tendency has been to increase that and we object to that as argumentative.

THE COURT: Well, I will allow the witness ——

A (Interposing) I am not going to say because it's not the factual and it's not truthful that the National Bituminous Coal Wage Agreement is an instrument that contributes to non-safety in the coal mines in this country when the opposite is directly a fact.

The National Bituminous Coal Wage Agreement, along with its safety clause in the contract, is an instrument that asks for and demands and requires a greater safety in the coal mines, so when you say to me that it is a contributing factor to less safety in the coal mines I couldn't disagree more with you.

Q Let me ask you if you disagree with this statement, whether or not you made the following statement, this is a United Mine Workers Journal, July 1, 1960, page 6, "Boyle told newsmen that the UMWA has always supported

[3576] mechanization in the coal industry but that he doubted the feasibility of complete automation in the coal pits of America because the peculiar nature of the coal industry may make that impossible. He also warned the coal operators not to 'pushbutton' our members to death. He said the United Mine Workers will go along with machines just as long as our members' lives are protected, but he added, 'I am afraid automation may already have passed the limits of safety.'"

A Mechanization, I think it says, doesn't it?

Q Automation.

A Okay.

Q "May already have passed the limits of safety." Did you make that statement?

A I did, and I'd like to qualify it by saying this, that the statement was carried that needed clarifying and it was impossible to get it in any other form other than into the United Mine Workers Journal.

The statement was attributed to me and taken out of context, said that I was opposed to mechanization and the policy of my predecessors, which was not only erroneous, it was totally untrue, it was an untruthful statement.

I did say and I corrected it by the statement that you see in the Journal by saying that we were not opposed to mechanization. I didn't say that we were encouraging or discouraging, but I said that we were not
[3577] opposed to it, that I was opposed to automation because I don't think it is an industry that can be automated, and I stand on that. I said it, I believe it, and those who disagree with me, that is their rightful privilege, but I still say that the mines, the coal mines of this country can adapt themselves to mechanization but they cannot adapt themselves to automation. That statement I did make and I stand on it.

Q Well, it is true, is it not, that the United Mine

Workers has not only encouraged but has assisted in the mechanization program of the industry, is that not true?

A Well, if making contracts along the lines of asking for greater benefits for the people who work in mines is a contributing factor, why, then I would have to agree with you.

Q I would like to read into the record the statement of President John L. Lewis, December 3, 1958, from the 1960 minutes, page 39, and that is Exhibit 135.

MR. COMBS: What page?

MR. ROWNTREE: It is page 39. "The bituminous coal industry as a whole, with the assistance of the Mine Workers, has made many forward strides in modernizing its mines and adopting more efficient mining methods, thus ever increasing its per-man day output in lowering its cost of production."

[3578] BY MR. ROWNTREE:

Q Now, Mr. Boyle, do you recall the Robena mine disaster in 1963?

A Yes, sir, I do quite well, I remember.

Q And is it not true that you, after investigation, determined that that disaster was caused by mechanization past the point of safety?

A It was caused by what?

Q Mechanization past the point of safety?

A You can't blame mechanization for it as such. You can't just openly say that because the mine was mechanized they had a disaster in it. The proof ——

MR. ROWNTREE: (Interposing) I would ask counsel to file, if they will, a copy of the UMW Journal of February 15, 1963, page 5.

MR. COMBS: Of course, counsel is asking me to furnish something now that I had no notice of. I don't have it. I would like to know what question it is, what it is directed toward so I can understand. Maybe we can clear

things up. I don't believe the witness understood your question.

THE WITNESS: What?

BY MR. ROWNTREE:

Q All right, sir. Did you make a statement that appeared in the journal, the edition just mentioned
[3579] of February 15, 1963, to the effect that this Robena disaster could be attributed to the mechanization past the point of safety?

A No, I didn't make that statement.

MR. ROWNTREE: Would counsel file a copy of it?

A I don't recall making such a statement. I will tell you the statement that I made on it.

Q All right, sir.

A When the Robena disaster occurred, I went—I arrived at the scene of the disaster before one body was removed. I stayed there for several days during the recovery operation. I returned to Washington, and when the hearing was set by the State of Pennsylvania, I sat in every day's session, every hour, every minute of the hearing conducted by the State of Pennsylvania, the State Department of Mines.

Many witnesses were called from both sides. The explosion that occurred in the Robena mine was caused by electricity, as I understand it, as I remember it, which could happen in a small mine if they have electricity in it, as well as a large mine. I did not say, and if I am quoted as saying that, why I am improperly so, because the mine was mechanized they had this explosion. It is true that the machinery in the mine under the permissible conditions that is expected of that machinery to be inspected and kept in a permissible condition. In all probability explosions of that nature, in my opinion, whether
[3580] it means anything or not, don't occur, but if an operator, large or small, in a gaseous mine

permits his machinery to become non-permissible they are looking for trouble, if they don't have an explosion they are inviting one by leaving that machine in a non-permissible condition because that is why we have the Bureau of Mines' nameplate on these machines for working in mines of a gaseous nature that require that those machines be of a permissible nature, and it was discovered in the Robena mine that some one company, it could have happened in a small mine, it could have happened in any size mine, that the men working in that area of that mine lost their lives, in my opinion, due to the fact that a machine or machines became non-permissible. It is just that simple, gas passing over those machines, in my opinion, became ignited, caused the explosion, got coal dust in suspension and raised havoc in that area of the mine. All of which, in large or small mines, that's why we have the safety laws that we have in our National Bituminous Coal Wage Agreement.

Those explosions don't happen only in large mines, they will happen in small mines, too.

Q Do you recall that two months later there was the Compass mine disaster and that there was a finding that this was attributable to excessive pushing for higher productivity?

A I do have knowledge of the Compass mine [3581] explosion, but ——

MR. COMBS: (Interposing) May I ask counsel who he is talking about now? You said there was a finding. Who made that finding?

MR. ROWNTREE: That was a federal finding, I believe, in the UMW Journal of May 15, 1963, page 3. I wonder if counsel would supply those two pages for the record?

MR. COMBS: This is an awful late date to ask for that.

MR. ROWNTREE: Yes, it is, I am sorry. I read it at the library and I could not get copies. This is the UMW

Journal, February 15, 1963, page 5.

MR. COMBS: 1963?

MR. ROWNTREE: Page 5.

MR. COMBS: Page 5.

MR. ROWNTREE: UMW Journal, May 15, 1963, page 5.

MR. COMBS: I will see what we can do about it.

BY MR. ROWNTREE:

Q Mr. Boyle, have the international officers of the international executive board of the UMW had a discussion since you have been president about giving or the allowing of an alternative contract that will give regard to the conditions of thin seam areas of the country?

[3582] A I think that you want me to say what I have already stated on the record.

Q I just want to know if you discussed it.

A You would like me to gear my next demands, I suppose, with the coal operators on the ability of some small coal operator in Tennessee who says that should be the national scale?

Now, if that is your question, why, I can't do that, you see, because the policy committee won't agree with me and——

Q (Interposing) I just wanted to know if you had discussed it.

A Huh?

Q Have you discussed it in your national board or among your officers?

A I don't have any memory, it could have been, I don't remember right now.

Q Now, Mr. Boyle, the incident in southeastern Tennessee that you seem to be most familiar with is the Allen and Garcia incident, is that correct, the period of time of Allen and Garcia?

A Well, let the record show I am no expert on Tennessee. I don't get down here as often as I would like to.

[3583] Q Now——

A (Interposing) But when you say some area in Tennessee that I am familiar with, I am familiar with those locations of the mines, but the rest of the area, why, I am not familiar with.

Q Is it not true that this Allen and Garcia matter arose over the men seeking recognition of seniority on the job?

A Well, that was one of the factors and then I suppose that you will be able by the record to show there were others, but the outstanding complaint of those individuals that were working under the subcontracting arrangement of Allen and Garcia in the operation of the Tennessee Consolidated Coal Company properties, that was one of the largest, perhaps the largest complaint in the method and the manner in which Allen and Garcia came in there coldbloodedly to weed out men and families who were a few minutes ago, as you said, remained in those areas, who generation after generation grew up in those areas, to tear up the grassroots and move to somewhere else, that is what was expected of those men and they had qualified men in those mines and it was later proven that those men were qualified because many of them moved into other areas and industry, the coal industry, and proved their qualifications, but Allen and Garcia coldbloodedly came in there going to weed them all out and bring in employees from the Great State of West Virginia, and they brought
[3584] one over and displaced a man who had been running the machine down there, successfully so, qualifiedly so, for a great many years.

Q These men were afraid of the loss of their jobs, the job that they had known for many years, they were afraid for the livelihood of their families?

A They were afraid of losing their jobs, that's the only work they knew, like you said a few minutes ago,

Counselor, they happened to be some that were born and raised in that area, they knew very little of any other places to remove themselves and get employment, and so they, rightfully so, were trying to protect their interests, so they entered into a memorandum of understanding of agreement with the coal company down there and then the coal company ignored it and when they ignored it and started bringing other men in the men refused to work until such time as it was adjusted.

Now, ask me what I did about it. I will tell you.

Q Well, go ahead, Mr. Boyle.

A Well, I did everything as an officer of this union in conjunction with the other officers, my associate officers and my assistant, that was humanly possible to convince management that in their veins should run something besides ice water and that they ought to give consideration to those employees down there and that I was going to insist that they return to work and that they ought to get together and sit down and work out an arrangement down there because they certainly must have some qualified people in the great State of Tennessee.

[3585]

Q Now, these men had been on the job there for a number of years, most of them were over 50, weren't they, Mr. Boyle?

A I wouldn't say that, now. I don't know and I wouldn't say that that is true because I don't know the age of those people down there, but the ones that I met were not 50, and they weren't close to being 50.

Q Well, granted that some of them weren't 50. Did you not recognize that most of them were over 50?

A No, I don't.

Q All right, sir. Now——

A (Interposing) I think that I am entitled to know what bearing that would have on their job security if they were past 50. What is the matter with a man 50 years of

age if he is competent and capable and of doing all that is required of him in a coal mine as against a man that is 30? What is wrong with that?

Q I don't know. I am not an expert, Mr. Boyle, but Allen and Garcia were experts, weren't they?

A They were what?

[3586] Q Experts in the operating of coal mines?

A Well, I think I am somewhat of an expert as to whether you are going to tell me that a man runs a machine that I run all of my life, that's what he was running down there and he ran it for 10 or 12 years, as I understand, for that company down there, and if he was 50 years of age he couldn't run it any faster or any better than the motor will turn it over and he couldn't do anything faster if he was 20 years younger.

Q Isn't it true that the United Mine Workers recognized management's prerogatives in operating this coal mine and making decisions that had to do with management?

A As long as, the contract provides almost verbatim that the right of directing the working force of a coal mine is exclusively the right of the operator, and the United Mine Workers of America intends no intrusion and will not abridge that right, but they will only direct that working force within the confines of the framework of that contract and when they do otherwise then it becomes a grievance under the machinery of this contract, if they are under contract with the Mine Workers and it takes this orderly process of being adjudicated to a final conclusion.

Q Isn't it true that Allen and Garcia had the day-to-day job to get coal out of that mine, they had to make decisions about the safety of men or machines, about

[3587] the safety of men around machines, and that these decisions had to be made day-by-day and is this not the heart of the problem there?

A No.

Q In that operation?

A I couldn't disagree with you more, because being experienced in coal mining as I am in law, with all due respect to the legal profession, the little I know of it, which in fairness to you, you know little of the operation of the coal mine, I can readily see.

Q I grant you that, Mr. Boyle.

A When Allen and Garcia or anyone else tells you that their sole purpose and interest is to protect the life and the limb and the very being of those fellows, and we are going to have to get men in here from the State of West Virginia that are maybe even older than these people to run these machines for some unknown reason or reasons best known to that particular coal company and especially when it's the president of the local union that they are displacing, I just don't buy that.

Q And you didn't buy it, did you?

A I don't buy it now, I didn't buy it 20 years ago, and I am not intending to buy it if I am permitted in the future because I don't think that that is a fair evaluation of what took place at the Allen and Garcia operations
[3588] or while they were operating that mine for the period of time that they did.

Q What I am really getting at, Mr. Boyle, is this: Don't you think it would be fine if the UMW had a contract that would allow an operator or allow an operation where these men, men 50 years old or older could operate equipment that they were accustomed to?

A We have that.

Q Rather than just having one contract that you can live with, whether you can or can't?

A We have that contract now. There's no problem. I stated, and I reiterate what I said previously, we have that kind of a contract now. The problem is that these small coal operators that you are representing won't ask

for the going price. That's all. It's just that simple, no conspiracy, no nothing, just ask for the price and get it and then they can meet the terms of this contract.

This contract is designed and geared to take care of the vast majority of the people that mine coal, not for one coal company that you may represent, because that one coal company tomorrow, if we reduce this contract to a state of destitution, you might say, that is what it would end up in or if we give them Japanese peon wages, or whatever you call them, we can operate more coal mines than we are now operating, I suppose. A lot of people [3589] would go into business if they didn't have to pay any wages and then the next thing would be that they would come to me and say, "Well, we can't meet that."

Then I would say to them, "Well, let's give ourselves, of our people to you."

Then when does it end? I don't know, but I know if I know anything, I know for sure that the United Mine Workers is not going to start giving them with this policy committee that I have to do business with, they are not going to start giving themselves with he who wants to sell his coal below the cost of production, we just can't live with that.

Q Well, this contract is going to go on and on higher and higher, that's the prospect?

A I don't know, that will be a determination, of course, and that's just supposition on your part, but that will be determined, you see, by the convention and by the national policy committee and the president of this organization would be extending himself, to say the least, to say that this contract is going to improve or go higher or lower, I don't know. I work under instructions in that regard, but if there's anything that I can do, and I don't want it to be carried improperly so, if there is anything that I can do with this contract to improve the lot of the people that I have the privilege to represent, and the honor, they are

[3590] going to keep pace with the American standards that we all thrive on and that we all enjoy and they are not going to be debased and they are not going to be cut down and they are not going to become serfs and work for peon wages, Chinaman wages, or any other kind of wages in this country just because some small coal operator says it's going to drive him out of business if we ask for the going price, large or small.

Q Well, now, Mr. Boyle, how can a small operator in the southeastern Tennessee field hope to survive when this price that you keep mentioning has got a ceiling on it set by the West Kentucky Coal Company?

MR. COMBS: Your Honor, I object to the continuation of this line of questioning. It's highly argumentative, it's repetitive, it has been gone over and over.

MR. ROWNTREE: Well, that was an argumentative question, I grant you that was argumentative.

MR. COMBS: It's repetitive.

MR. ROWNTREE: That's the first time I have mentioned that name.

MR. COMBS: West Kentucky, it was.

THE COURT: Suppose we take about a 10-minute recess.

(Thereupon, a recess was had.)

BY MR. ROWNTREE:

Q Mr. Boyle, we have mentioned before
[3591] the negotiations in the southeastern Tennessee field between the Sewanee Coal Operators' Association and the United Mine Workers' representatives in which the Operators' Association presented some proposals based upon different kinds of mines depending on their method of operation.

Now, I would like to read a letter of the district president, Mr. Turnblazer, to Messrs. Callis and Baum of Tennessee Consolidated and Tennessee Products, respec-

tively.

MR. COMBS: Is that a letter that is an exhibit, Counselor?

MR. ROWNTREE: That is an exhibit in the case. I have not been able to find it on the table to get the number, but a letter of February 21, 1963, wherein Mr. Turnblazer says, "Actually the proposition you have made to the United Mine Workers of America in our bargaining sessions is a demand that we enter into a sweetheart contract, that is one where you can pay less wages and less into the Welfare Fund than we require of your competitors. Also you must be aware that from an economic standpoint any economic concessions granted to your companies would be immediately demanded, and rightfully so, by your competitors."

Now, is that a consideration that the UMW has in its bargaining of these small coal companies?

[3592] MR. COMBS: If the Court please, I think the witness should have the exhibit to look at so he would know what it is. That is two sentences out of one paragraph and I think the witness ought to be allowed to examine that before he answers any questions.

A Am I privileged to read the entire letter or just what you quoted?

Q You can read it. Have you never seen that letter before, Mr. Boyle?

A I don't recall seeing it. I may have, I don't recall, it is quite a long, lengthy letter. It doesn't show that I got a copy of it, and I don't recall that I did.

Q Well, I think those are the only two places in the letter where this concept appears, and if you will read those portions, I think you will understand the question.

A I understand the question. I see the letter purports to do something also other than the quoted remarks that you find in there made with respect to it.

He takes exception, the president of the district says,

"In addition to that," and I haven't read the entire letter, it may even embrace more of an extensive discussion than what I am familiar with, but he does say, "Because of its extensive nature I am not —I have not attempted to reply in this letter to all of the false and misleading statements and innuendoes made or inspired by your repre-
[3594] sentative during the last few weeks. However, I suggest that we meet at the earliest possible date in a sincere effort to iron out the problems that confront us

Now, if you want to read the whole letter, why, you will find, I suppose where he was attempting to arrive at some conclusion on a fairly equitable exchange of agreements and discussions, but he was cut off, according to the letter that you have introduced, he is cut off from that by the operators' statements and innuendoes, he says, or by the company's representative.

I think it is a most damaging thing against a coal company that it was necessary for him to be compelled to write such a letter to the coal company, because it appears several places in here that according to him, I wasn't there, that this coal company wanted to enter into some sweetheart arrangement, and that supports my earlier testimony that there are no sweetheart contracts in this industry that I have any knowledge of, and this district president couldn't be more proper in telling him that he refused to enter into any such sweethearting arrangement because you say that I resent it, I resent it for all it's worth that this industry or this union, rather, enters into no sweethearting and that just supports me, the statement that I made.

It is regrettable that it was necessary for him to write such a letter to the coal company, but I didn't
[3594] introduce it, you did.

Q Mr. Boyle, the quotations from the letter that I gave you before, are those considerations

that the United Mine Workers bear in mind in bargaining with the small coal companies?

A If I follow the question, I want to be sure on this if I follow your question, is this the policy or the attitude of the International Union with respect to contracts for smaller coal mines, is that correct?

Q That is right.

A The policy has always been and still remains to be a matter of negotiation and that's what this district president was attempting to do, was to negotiate a contract for these people, but they went far beyond, I suppose. From the reading of the letter, I don't know, I haven't discussed it with the district president, but, to say the least, that is, to my knowledge, I don't right now remember discussing it with him, but to say the least that the district president was trying to uphold the American standards, I suppose that are recognized in a contract-making of that nature, and the operator was asking for something beyond that and they failed to agree.

There is nothing wrong with that. We fail to agree with a large operator as well as a small one.

Q Well.

[3595] A Lot's of times they got from us things and we are not successful in getting all of the things we like to have.

Q Do you think that the other operators around the country have a right to demand any concessions that you gave your field down here?

A What do you mean by "concessions," lower wage rates, inferior safety measures?

Q Lower wage rates.

A No vacations with pay, no job security, are those the things that you want me to say that we ought to grant to somebody that operates a coal mine in this country, that we ought to deny them the right of what other workmen of

this country are enjoying, namely, vacations with pay, regular working time, a regular working period, job security, any of the fringe benefits that are in there?

I don't think that a man who is required to wash the coal dust off of himself and the oil and grease that he may acquire from running a machine or otherwise in a small mine should be denied that right any more than a man working in a large mine, and I don't think that the safety - you see, what you are going on those things ——

Q (Interposing) The safety has nothing to do with the negotiations.

[3596] A These fellows are denying or trying to deny the passage of a mine safety legislation that would protect these employees. Now, if you want us to write a contract that says they don't have to abide by those things or live up to those measures, why, I don't want to be a party to it. I don't think the scale committee or the policy committee is going to instruct me to be a party to it.

I think that the industry, not only being unique, but it's a hazardous industry, perhaps more hazardous than any other industry, and that those people that work in small mines are rightfully entitled to the same protection of their life and their limb and their well being as those who work in large mines.

Q You think that any other operator in the country has got a right to complain to you because you give any concessions to it?

A The basic principle is complaint in the coal industry, and we don't only recognize it, sometimes it is necessary for us to invite it in the instance of the people that you represent, invited by asking them if they don't want to get right with the world.

Q What I am asking you, Mr. Boyle, why should some operator in Pennsylvania or in West Kentucky or

anywhere else object to the form of an agreement that you make down here in southeast Tennessee?

A I don't know that any coal operator has [3597] ever tried to get me to make any kind of contract with any other operator, he certainly never discussed it with me, if they have, have some operators told you that they are trying to make other contracts or other coal mines?

Q Do you think there is any justification for Mr. Turnblazer putting that in his letter?

A I haven't read that portion of the letter.

Q It's the portion that I quoted.

A Maybe I should read the whole letter if you are going to question me on it.

Q It is the portion that I quoted to you, Mr. Boyle.

MR. COMBS: I object to that question. The question is: Does the witness think there is justification for what Mr. Turnblazer wrote in a letter. The letter is three pages long.

THE COURT: Sustain the objection. I believe that is argumentative, whether it should have been put in the letter or not.

BY MR. ROWNTREE:

Q Is that a consideration that the United Mine Workers has in bargaining with small coal companies?

MR. COMBS: I object to the question. May I say, what is counsel asking is the consideration?

MR. ROWNTREE: The portions of the letter [3598] that I quoted to the witness and which are marked on that letter in front of the witness.

MR. COMBS: Well, I don't understand the question, the witness might.

THE COURT: He may answer if he understands the question.

A Well, I think that—I don't think counsel would

want to have an answer to this question. Let me read what you are asking him and then I will give you the answer. You talk about "sweetheart contracts." We have none and will not have such a contract.

"Actually the proposition you have made the United Mine Workers of America in our bargaining session is a demand that we enter into a 'sweetheart' contract."

Q Go on and finish.

A All of the letter?

Q No, that sentence.

A "That is one where you can pay less wages and less into the Welfare Fund than we require of your competitors. This is a vicious proposition and so that there can be no misunderstanding the United Mine Workers of America will not recommend to its members acceptance of an offer by which you can enrich yourselves by requiring your employees to labor at your proposed rate."

Is that where you wanted?

[3599] Q Yes, sir. Now, is that what the United Mine Workers stands for in bargaining with the truck mines, small truck mines of the country?

A Well, the best answer to that is that we have contracts with small mines, maybe more than you represent in the entire industry, from the West Coast, New Mexico to Pennsylvania. We perhaps have more small mines under contract, known as small mines, than what you represent in Tennessee, and let me say to you, Counselor, that with the price that they are supposed to be getting for this coal they can meet all of their requirements for the contract without any "sweethearting," and we resent even mentioning of the fact that a "sweetheart" arrangement should be entered into, if that's what it requires for these people to stay in business. It is something where our people must work for coolie wages, so they must work for unsafe conditions where they must work long and arduous hours in

order to eke a small portion of a wage, then we don't think that that is conducive to the American standards of living or the American way of life and we argue with these coal operators, whether you represent them or anyone else, that that is not the proper thing or the proper attitude to take under a free democracy and we have the right to ask these people for those things, and they have the right to object to them, if they so desire, and then stems
[3600] from that this contract with the United Mine Workers.

You wouldn't imply in your question to me that because we sit down or some district president sits down with a coal operator in Tennessee that he should relinquish all of his American rights in representing these people by saying, "Well, if you say that is all you can have in a contract let's make one like that"?

I don't know where we go from there. There would be no ending to it, we would wind up again maybe with the passage of another Guffey Act to keep them from committing suicide down here in this industry. That I don't think you want to have happen, certainly I don't, and that is exactly what will happen, and that's what brought about the passage of the Guffey Act and that helped bring about the NRA in the days gone by, as you well know now, and it was here as well as elsewhere that that applied and that they had under consideration when they passed that Guffey Act.

Q Now, will you read the last sentence in that paragraph, please?

A Yes, I will be glad to. The other one that you have marked at the tail end of paragraph 2?

Q Yes, sir.

A "You must be aware that from an economic standpoint an economic concession granted to your com-
[3601] pany would be immediately demanded, and rightfully so, by your competitors."

That just bears upon what I just said, they would be

cutting each other's throat to get the market and that's exactly right and I compliment the district president for putting it in the language that he did. I think that he couldn't have stated it more factually and more truthfully that just as soon as he met those demands in the "sweetheart" arrangement, that tomorrow and the day after and the next day they would be in asking for some other concessions that they would downgrade the working standards and the living arrangements of these people so they would be degraded to a point that they wouldn't be even getting coolie wages.

No, he was right in saying what he did, in my opinion. That doesn't necessarily make it right, but in my opinion he was right in asking for the American standards to be lived up to.

Q And that would affect the conditions of, say, Consolidation Coal Company?

A Would it affect them?

Q Yes, this kind of a contract, would that affect the Consolidation Coal Company up in Pennsylvania or Peabody Coal Company out in Illinois and west Kentucky?

A Well, I suppose if those coal companies [3602] are taking the coal from the small operators which you are talking about, if there's some of them that are doing it and they do take some coal, I suppose it would affect them with a lower price in their rate structure, I suppose they could do that and it might affect them. I don't know, but they are certainly getting no aid or assistance or help from this union to do it. You see what it is doing?

Q Would they get their assistance from the union in being able to compete with Peabody Coal Company?

A In what way, in refusing and debasing this contract

Q In competing on the market.

A That's what you mean?

Q In competing on the market that exists.

A I wouldn't know about their competing on the market, I am not in that field, but as far as the contract is concerned, I thought I made myself quite clear, in fact, I thought I made myself crystal clear, we are not going to debase this contract if people want a contract with us and if those employees want a contract with us and we can bring to them the benefits that our contract spells out, or any contract that is negotiated, we would be happy to do so, but don't ask us to debase ourselves to the point that we wipe out a contract. We might as well sit around and "sweetheart" all day and all night with these peo-
[3603] ple by telling them the things that he asked for in here, apparently. We just can't do that.

Q Mr. Boyle, is a "sweetheart" contract in your definition any kind of contract that does not abide by the National Bituminous Coal Wage Agreement?

A No, I wouldn't say that, because, you see, I am not familiar with the word "sweethearting" until I get down here. I don't know where that exists anywhere else in the industry, but it's quite a word or a term to be used down here for special purposes, I suppose, perhaps it might influence the thinking of the public or someone else, government or someone, but it is used, it is bandied around and kicked around, but when the fact of the matter is that we don't believe in "sweethearting," whatever it is.

You tell me what "sweethearting" is if it isn't in the making of something, in the form of something that debases the national contract or any other contract that other people are expected to meet the requirements of that contract and then to make something of a lesser nature to take away from those same people, like a timberman, have him work for $5 a day in a mine in Kentucky or 10 and yet expect him to go over to Virginia or West Virginia or Illinois and get $25 a day for the same job. Why?

Q You are asking me?

A Why? I am talking to myself. I can't
[3604] understand why.

Q Well, would you let us consider the productivity of the mine and the ability of the operator to pay the man the best wage that he possibly can?

A On the productivity of a certain mine we set a certain wage scale, is that what you want?

Q That is correct.

A Well, I think that they had those scales along the sliding scales and variations of scales and they found out that it was not in the interest of the small or large coal operators, and certainly not in the interest of the members of the union. If you are going to have those kind of arrangements that you have a sliding scale arrangement, certainly you don't need a union to represent you, you can go in there and to the boss in the morning and tell him that you are willing to accept what he is willing to pay and you take his word for it. You would have no other word to take, so you take his word.

Q Why is it not in the interest of the major coal companies——

MR. COMBS: (Interposing) If your Honor please, I suggest that these questions are highly argumentative.

MR. ROWNTREE: I withdraw that question.

BY MR. ROWNTREE:

Q Mr. Boyle, under the 1964 contract does
[3605] the 80-cent provision for Welfare Fund payment apply only if the sub-contractor is a signatory to the United Mine Workers' National Bituminous Coal Wage Agreement, or does it apply only if they are not signatories

MR. COMBS: I object to that question. Counsel himself has read that clause into the record from the contract, and I suggest the contract would speak for itself and he is asking this witness to construe a written instrument here

that is already in the record.

THE COURT: Why would not that objection not be a valid objection, Mr. Rowntree?

MR. ROWNTREE: Well, I think the instrument does speak for itself, I agree with your Honor.

That is all.

REDIRECT EXAMINATION

BY MR. COMBS:

Q Mr. Boyle, counsel has been asking you questions concerning the negotiations with the Sewanee Coal Operators' Association in Tennessee. I hand you a letter addressed to you from Mr. Turnblazer. Would you examine that letter and see if it refreshes your recollection?

A Yes, I have a recollection of this letter coming to my office.

MR. COMBS: If the Court please, this is the letter addressed to the witness, Boyle, from Mr. Turn-
[3606] blazer that contains a memorandum of the meeting of this association. It also contains a proposal made by or introduced by counsel here made by the Sewanee Coal Operators' Association, and I offer that as an exhibit.

MR. ROWNTREE: We would like to look at it, your Honor, and read it, otherwise we think we ought to have the witness on the stand. We might be able to agree on it.

MR. COMBS: Do you want me to go on?

MR. ROWNTREE: That is agreeable, we have no objection.

THE COURT: Exhibit 368.

(The letter and attachment referred to above was marked D368 and received in evidence.)

BY MR. COMBS:

Q Counsel asked you a while ago concerning a state-

ment made by Mr. Lewis, reading from the proceedings of the 1956 convention contained in the appendix of the Pennington case on 315, he read from part of a paragraph It concerned the question of a discussion of stabilization and he asked you if you had heard Mr. Lewis make that statement, and your recollection was that you probably did you didn't know exactly, but I would like to read the first part of that statement, the beginning of the paragraph, and that is this, "There has been much talk lately about a stabilization plan, much of it is affecting the Mine Workers and the operators. It has no basis of fact and
[3607] cannot be considered practicable."

Do you also remember that part of Mr. Lewis' statement?

A Well, my answer to the statement that he made was that I did remember, is that what you said?

Q Yes.

A Well, that was just a part of what President Lewis said, whether it was before or after, he said both of them at the same time.

Q That's right. Now, counsel asked you in several instances in practically the same question about the 3-day work-week in 1949 and a shorter work-week.

I believe your statement was that the union had always tried to get a shorter work-week, its constitution provided that they would strive for a 6-day work-week.

Now, with reference to the 1949 negotiations, do you recall whether or not that a demand was made on the part of the union to include in the contract that was to be negotiated a 3-day work-week?

A No, that, you see, in the 1949, as I stated on cross-examination, I believe it was, that in the making of the 1949-1950 contract, I had only been in the Washington office a year, or thereabouts, a little over, and I did not participate in all of those negotiations that were held and

[3608] when the statement came out I also stated that I was going from White Sulphur Springs, where the negotiations were being conducted, to headquarters in Washington to keep the house in order the best I knew how while the top negotiators, namely the international officers and the scale committee, were negotiating the contract, and I did not participate in all of the wage scale negotiations in the '49-50 agreement and if the statement on the 3-day work-week could be better answered by someone, namely perhaps International Secretary-Treasurer Owens, who would be a witness that did participate in all of those negotiations, I did not, and for me to say that he made that statement would not be proper, because I have no recollection of him making that statement, and it was not, as I understand, a proposal or a demand for it to be inserted into the contract.

I have no recollection of that. No such statement was made while I was present and I wasn't in on those negotiations, as Mr. Owens will tell you, I wasn't an officer of the union at that time, I was assistant to the president.

MR. COMBS: Will the Court indulge me just one moment please?

BY MR. COMBS:

Q Mr. Boyle, you testified in connection with the BCOA being formed, I believe, in 1950. Did the United Mine Workers have anything to do with the forma-
[3609] tion of that association?

A Absolutely nothing.

MR. COMBS: That's all.

THE COURT: Mr. Boyle, have you ever participated or on behalf of the United Mine Workers in any negotiations with any coal operator or with any association of coal operators in which it was a part of the agreement reached in such negotiations that the United Mine Workers would impose the same contract there agreed to upon other coal

operators who were not a party to those negotiations?

THE WITNESS: No, your Honor, I never did.

THE COURT: Have you any knowledge of any such understanding ever having been reached?

THE WITNESS: No, I never.

THE COURT: By the United Mine Workers?

THE WITNESS: As I understand the policy of the organization and of those who were a party to the policy that preceded me was one that the contract is the same position as taken by the officers today, it is a negotiable instrument, subject to negotiation by the parties.

RECROSS-EXAMINATION

BY MR. ROWNTREE:

Q Mr. Boyle, did you participate in the negotiations for the 1958 contract?

A 1958 contract?

[3610] Q Yes.

A No, only from the same as the policy committee and the scale committee, I was not an officer of the union at that time.

Q Did you have any part in the formulation of the protective wage clause?

A Only insofar as a policy committee member is concerned and a scale committee member is concerned and it received the approval when it was brought before us, a large group, it was brought before us for approval, why, it was approved by the scale committee, yes, sir, and became a part of the contract.

Q The language of that clause was designed by lawyers, I take it, or who designed the language of that?

A Well, I wouldn't know. If I knew, I would be glad to tell you, but it had no bearing because it is not in the contract now, it became inoperative and we couldn't use it and I am not going to labor the point as to its values.

It is not in the contract presently, so I don't think it has too much bearing on what you are trying to develop.

Q Well, of course, this coalfield was largely closed down, Mr. Boyle, before the 1964 contract.

Now, is it not true that the language in the 1958 amendment says that the UMW will not permit any different contract?

[3611] A Whatever the protective wage clause says, why, I stand by that, and I would read it for you if you have got it, if you haven't got it, I will get it.

MR. ROWNTREE: I agree with you that the clause speaks for itself.

REDIRECT EXAMINATION

BY MR. COMBS:

Q I believe, Mr. Boyle, that the protective wage section of the contract is in litigation, that has been before the Board?

A That's correct. I took it for granted that counsel knew that.

RECROSS-EXAMINATION

BY MR. ROWNTREE:

Q But that was agreed to between the UMW and the BCOA, that protective wage clause?

A And it became inoperative, it's now in the court, I don't know what court.

MR. COMBS: One more question, if the Court will indulge me.

REDIRECT EXAMINATION

BY MR. COMBS:

Q Mr. Boyle, was that protective wage clause,

you recall the committee that was formed there, did tha committee ever act, is it active or was it activ
[3612] at any time?

A Was it what?

Q Was it active, the committee that was set up by the PWC?

A I have no knowledge of anything that was ever done by any committee that was set up under the protecti wage clause.

Q Is that because of the passage of the Landrum-Griffin Act?

A I think that that entered into it.

* * *

[Printer's Space]

JOHN OWENS,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

[3613] BY MR. OWENS:

Q Will you state your name and address, please?

A My name is John Owens.

Q And what is your address?

A 821 Clark Street, Cambridge, Ohio.

Q Mr. Owens, are you a member of the United Mine Workers of America?

A Yes, sir.

Q When did you first become a member?

A I think it was in September, 1901.

Q Was that when you first started working in the mines?

A Yes, sir.

Q How old were you at that time?

A Ten years old.

Q Do you have a position with the United Mine Workers now?

A Yes, sir.

Q What is that position?

A I am the International Secretary-Treasurer of the United Mine Workers.

Q How long have you been the International Secretary-Treasurer?

A Since 1948.

Q Now, will you give, starting from the

[3614] first position that you held with either of the three branches of the organization, the positions

that you have had, a short history of it?

A I started to work for the coal miners as such at the mine as their representative on the tipple in 1915. I was elected subdistrict vice-president of what is known as Subdistrict No. 6 in Ohio. I took office on April the 1st, 1921, and I became president, international representative, district president, and International Secretary-Treasurer.

Q Did you ever serve as assistant to the International President?

A I served in the capacity that President Boyle testified to. I assisted the president in all of the requests that he made prior to when I became International Secretary-Treasurer of the organization.

Q Now, have you held any positions in labor organizations, any other labor organizations other than the United Mine Workers?

A I was president of about 275,000 members of the Ohio CIO for five years, and I was president of a labor non-partisan league in Ohio for some five years or six until we withdrew from the American Federation of Labor or the CIO.

[3615] Q There is already testimony in the record concerning the function of the national policy committee and I won't go into that again, but have you been a member of the national policy committee?

A As far as I can remember I have participated in some capacity or other in all of the wage negotiations outside of the Jacksonville Conference in 1924 since 1912 as a representative of the miners in the State of Ohio and international representative.

Q Will you give a brief description of the history of collective bargaining from 1922 up until 1941?

A Up to 1941?

Q Yes.

A In 1922 the conference consisted of what is known as the four central competitors' field, it consisted of Illinois, Indiana, Ohio and western Pennsylvania, and the representatives of the operators and representatives of the miner would convene at some agreed city and try to work out a contract, and that was the method that was pursued in conferences up until, oh, I think in 1940.

Q How about the operators that were outside those four states that you enumerated?

A They were considered in the industry. The industry itself would never crystallize a united judgment as to how they should proceed in these negotiations. We also felt that they should be a national repre-
[3616] sentation in these joint conferences. We had to accommodate ourselves to the wishes of the owners, employers, and the operators of the mines and whatever arrangements they made we had to be governed accordingly. We couldn't refuse to meet with the representation that they presented. We couldn't change it because under the law and under the contract we had to proceed to attempt to negotiate a contract with whatever tribunal they set up to represent the operating industry.

Q Well, did you participate in the negotiations of 1924?

A That was the Jacksonville Agreement, Counselor, and I wasn't at that conference as such. I participated in that conference that was successful in negotiating a 3-year wage contract.

Q Well, how about the Jacksonville conference of 1927?

A I participated in the Jacksonville conference.

Q Will you tell what occurred at that conference?

A I think that was the first conference that I ever

addressed the joint wage conference after I became a representative of the United Mine Workers. In that Miami conference, industry had been under contract for three years, a great segment of the industry was operating mines without contract, some of them were under contract with the United Mine Workers in some states, were operating mines without contracts south
[3617] of the Ohio River. There was turmoil, dissatisfaction, prices were going down, coal companies were being sold on the courthouse steps for taxes, miners' homes were being closed or foreclosures on miners' homes, grocery store operators were going into bankruptcy, and a general breakdown of the whole economic structure from a professional standpoint, from the landowning standpoint and an investment standpoint of the coal lands that were owned by farmers, transportation facilities were stifled, the whole economic structur was being paralyzed by policy that was being practiced by coal operators not signatory to the contract.

Q What were the proposals of the operators in '27?

A It became so—it became so dissatisfaction—so much dissatisfaction existing in it that coal operators that had been under contract and were under contract in negotiation with us proposed that we enter into a what they called a continued wage, sliding wage contract, and they provided in their proposal that they would be some kind of a tribunal established jointly by the industry that would meet at certain times when it was necessary to revise the wage scale and if they couldn't agree upon the tribunal within the industry that it would be created by some federal court and that tribunal's duty would be to provide whatever scale or whatever wages the machine would work that would be in the contract and would be predicated upon whatever the wage scales were being

[3618] paid in the non-union mines south of the Ohio River.

Well, the result was that such a ridiculous thing—it was such a ridiculous thing that the conference broke up. The contract expired. Coal operators in Ohio, Pennsylvania, West Virginia, and other parts of the country that had had contracts with the United Mine Workers started to working their mines without an agreement.

Long struggles, months and months of struggles and men were evicted from their homes, coal operators lost their assets, starvation prevailed in the industry. They beat the wages down until men that were qualified to heist coal at the shaft that had been paid, that were being paid $300 a month were compelled to work for $30 a month and the price of coal went down and down and then the plight extended from Ohio on south of the Ohio River to Indiana, Illinois, Missouri, and out on the West Coast to the State of Washington and Montana, Utah, Colorado, New Mexico, and it became so disgraceful, it was ignominious to the extent that the federal government of 1933, cognizant of this fact, they tried to bring back some state of economic justice to the men who worked in the mines and some state of income to the investment in the industry.

Q Now, are you referring to the NRA Code that was set up?

[3619] A And established the NRA Code.

Q All right. Tell what that did.

A The NRA Code was established in all coal-producing states in the United States, it provided for a minimum wage in Alabama, Tennessee, West Virginia, and Kentucky and Ohio and everywhere else, it wasn't any union, the law established the codes, and the code

was and we were directed by the President of the United States under the law to accept those differentials.

Q Well, what were the differentials, you talking about differentials of wages?

A Or the wage rates that was provided for, they ran from, I think, perhaps $3.60 to $5.60 in Montana, Alabama to Montana. I wouldn't be positive about that because my memory—it may be more than that in Alabama, but that's approximately what it was and then on that basis, from the basis of the law directed by the President of the United States, the joint wage conferences was assembled and we used the basic created by the law that provides the basis here in southern Tennessee to negotiate every wage from that day up until 1964 with one exception, and that is in 1941 we eliminated a 40-cent differential for the day men and south of the Ohio River in the southern coal-producing area.

Q Before we get to '41. Now, you say there was a 40-cent daily wage differential between the

[3620] North and the South?

A That's right.

Q How about the tonnage rate, was there a differential in the tonnage rate?

A The tonnage rate was from, oh, I think from 15 cents to 3 or 4 cents a ton less in the South than they were in the North.

Q Let me ask you this now: Has it been a policy or what has the policy of the United Mine Workers been as to uniform wages and working conditions?

A All of my life I think it has been the policy of the United Mine Workers of America to try to secure a wage scale that would provide the same standard of existence for a man, whether he lived in Alabama or whether he lived in Montana. We hold, and we have

always held, that a man who is employed in the coal mine in any section in this country is entitled to the same standard and opportunity that he has in any other part of America, the right to an income predicated on a sufficient amount to educate his children, to clothe them, to house them, to maintain them under an American standard of existence, whether it is in Tennessee or whether it is in any other part of the country, and that is nothing new, that is the ambition of all Americans, whether he is on the farm, whether he is practicing law, whether he is on the bench, whether he is teaching school, or
[3621] what he is doing in this country.

Q Well, how were the contracts then negotiated from '33 or '35 until 1941?

A In 1941 we would meet with representatives of the southern operators and the northern operators.

Q Well, would they meet jointly?

A We would meet jointly.

Q Prior to '41?

A We met prior to '41 sometimes.

Q Would they negotiate their contract or would they execute the contract at the same time?

A If my memory serves me right that the southern coal operators' representatives never stayed in a conference and negotiated a wage contract until Senator Burke stayed in the conference in 1945.

Q All right, now.

A And they never stayed in one since, that I recall.

Q Let me ask you now about the 1945 negotiations. I want you to tell me about that, how it occurred, who was in it, and what happened.

A Well, they had representatives of the association selected by the operators. I can give you the names of the men, I think Walter Robinson of Ohio was chairman

of it, John Morrow from Pittsburgh represented the Western Pittsburgh Coal Operators' Association,
[3622] and Charley O'Neal representing the Eastern Coal Operators' Association and Mr. Putman representing the South, the Virginia Coal Operators' Association, and Mr. Gunter representing the Southern Tennessee Coal Operators' Association.

All of those representatives would file with the joint conference, on request from us, that they had authority and that would become a matter of the record of the joint conference that they had authority to represent who in the conference, and they would name all of these associations and if the operator wasn't a member of the association, why, they would give his coal operator's name individually and it would become a matter of record of the conference.

Q Well, now, did any operator belong to more than one association?

A I think that is true in these local associations that they had at the Greenbrier and Canoy, and they represent a geographic segment of the industry that they used to sort of administer the contract and they select commissioners to represent them in any disputes that arises under the terms of the contract, or they hold meetings and discuss their economic problems in addition to that, but primarily, a coal company may operate a mine, like a number of companies, he may be operating a mine in the State of Ohio, one company, he might have mines in Pennsylvania, he might have
[3623] mines in West Virginia, and they belong to those various associations in the state where they are producing coal.

Q So that when you talk about Northern Operators' Association, they might have mines in both the North

and the South?

A That's right.

Q Well, now, was the differential eliminated in that conference in 1941?

A In 1941 we eliminated the 40-cents-a-day differential for daymen, which represented about 45 per cent of the employees.

Q Well, now, about the tonnage rate differential?

A We never eliminated it, it still remained from 15 to 3 or 4 cents less than was paid in the North.

Q All right. Did the southern group stay in that conference until a contract was executed?

A Oh, they, as usual, walked out and we had to reorganize the conference, consummate an agreement. As soon as it was consummated, why, they would come in and sign it.

Q Who would come in and sign it?

A Representatives of the Southern Operators or individual companies.

Q Did you first negotiate it with the northern group and execute the contract with them and then the southern group?

[3624] A After they walked out.

Q All right. Now, when was the next contract negotiated?

A The next contract was in 1945. We never negotiated a contract, only the Illinois agreement in 1943 with the Illinois operators. The reason for that was that the government took the position that we had gotten more than 15 per cent of an increase in 1941 and we weren't entitled to any more increase and that's what caused many of the troubles in the industry from 1941 to 1945. We worked under the same wage scale from 1941 until 1945.

Q Before we get to that, will you describe how the increases occurred, or how they were applied from 1941 on, both in the daily rate and in the tonnage rate?

A Well, they were applied across the board. I think the record will show that as President Boyle testified here today, that they started to increase in 1945 or 1946 was the first increase we got after 1941 and it—

Q (Interposing) Without giving the amount of the increase, describe, though, how it is done, take the tonnage rate. How do you figure the tonnage rate with the uniform increase?

A Well, the tonnage rate was established in 1933 and we would increase the tonnage rate equivalent to the amount of money that the day wage rates pro-
[3625] vided for. If it provided for approximately 10 cents a ton, why, we would increase the tonnage rate 10 cents a ton and the machinemen rate so much a ton and the dead work rate and the yardage rate so much a yard.

Q Will you describe—

A (Interposing) We never increased them after 1941.

Q All right. Then how did you apply the increase from 1941 on to the tonnage rate?

A 1941, when we increased, elongated the hours per day and the industry worked 9 hours the only coal miners in the world that worked 9 hours during the war, we did, we elongated the day from 7 to 8 hours and under the 1941 contract they were entitled to time and a half for the eighth hour and the contract was made, the 8-hour contract was made and the 6-day week was made that we would get time and a half or a ton and a half for the eighth hour or if they were paid by the day they got time and a half at their day wage rate, but the tonnage man got a

ton and a half for the eighth hour and that was carried on until 1945 and we elongated the day then under the contract to 9 hours and then they got paid the tonnage rate as provided for in the 1941 contract plus the time and a half for the eighth hour and one-ninth for travel time that the Supreme Court said we were entitled to pay for travel time, and that existed up until 1946.

[3626] Q Then would you make the increases in wages that were negotiated during this period of time?

A We never had any increase in wages.

Q Or up until the present time if a man was loading coal and he loaded 10 tons of coal a day, how would you figure what his wages would be?

A In 1946 the contract provided for $1.85 for across the board to all of the men. Now, the same contract that they worked under from 1941 up until 1946, the same rates as provided for in the contract in this instance in Tennessee, here it is, I think approximately 78 cents a ton, they would get 78 cents a ton, time and a half for the eighth hour and one-ninth for travel time and a dollar and 85 cents for 8-hours' work, 9-hours' work at that time.

Q Then each succeeding increase was added on per day?

A Each increase we made added to that contract as now in existence, it hasn't changed, the same increases applied since 1933 under the same method as existed since—as it was in 1941.

Q All right. Now, you say that the Southern Operators withdrew from the Appalachian Joint Wage Conference in '41. Was a reason given for that?

A Well, the usual reason that they thought

[3627] their day wage, 40 cents a day, shouldn't be

changed, but the usual position of the Southern Coal Operators were that they didn't want to make an agreement and they would walk out of the conference.

Q All right. Then after 1941, what was the Illinois agreement referred to as the Illinois Agreement?

A We made a contract in 1943, I think with the Illinois operators, which was approved by the National Mediation Board or the National Labor Relations Board.

Q Was it the War Labor Board?

A Yes, the War Labor Board.

Q And what happened to that?

A Well, in 1945 there was—

Q (Interposing) Well, back in 1943 when you made the agreement just with the Illinois operators, did that contract just apply to the Illinois operators after it was approved or did it apply to the whole industry?

A It eventually became the industrial agreement that applied everywhere.

Q All right. Now, how about in 1945, what occurred at that time?

A We made an agreement and that was the first time that the southern operators stayed in the conference. They had been represented in the conference by Senator Burke, I think he was employed in 1943.

[3628] Q Who all did he represent?

A Well, he filed a list of the associations and individual operators with the conference, with the secretary of the conference, that he represented. I think he represented practically all of the South outside of the operators that were operating coal mines in the North, unless they belonged to some association that was paying him he didn't represent them.

Q Who else?

A He only represented those that would pay him.

Q What other operators were in the conference?

A The Northern Coal Operators' Association or, not the Northern Coal Operators' Association but operators' association from—you speaking of 1945?

Q 1945.

A I think they were there from Washington, Utah, and Wyoming, Illinois, Indiana, practically all of them.

Q All right. Did both groups then execute the contract at the same time in 1945?

A Both groups executed the contract at the same time.

Q All right. Now, was there a work stoppage in 1946?

A Yes.

Q Well, tell me what that was about and [3629] how a contract was reached at that time.

A Well, it was over the question of termination of the agreement. We hadn't had any increase in wages since 1941 and—are you speaking about 1940—

Q '46.

A '46. We hadn't had any improvements in our wages in—the operators and the government took the position that the war wasn't over, that the stabilization policy was still in existence and there wouldn't be any change in the wage structure because it was in effect for the duration of the war and the war hadn't been declared to be ended yet.

Q Then what happened?

A Well, it brought about a cessation of work. The government seized the mines.

Q Then what happened, how were negotiations carried on?

A After the government seized the mines, why, we met with the representatives of the United States,

Secretary Krug, of the Interior Department, and after many negotiations we consummated an agreement.

Q And that is referred to as the Krug-Lewis Agreement of 1946?

A Yes. And by that time the policy was exchanged the Price Administration or the National Labor [3630] Relations Board felt that labor as a whole should be permitted to negotiate new wage standards and they approved an increase of 18-1/2 per cent. We got $1.85 increase and that's how the $1.85 became part of the 1946 contract and that was applied to most all unions in the United States.

Q And how about the Welfare Fund?

A And we secured a 5 cents a ton for Welfare and Retirement Fund, negotiated that with the industry in this conference and it was approved by the President of the United States and approved by the War Labor Board.

Q All right. How long did the government continue to own or control the mines?

A Willard, I can't recall exactly how long it was but as soon as the operators could get their house in order, why, they would turn the mines back to them, just as soon as the operators would consent to carry out the terms of the contract, why, they would turn them back over to them.

Q All right. When did the next negotiations occur with the operators?

A I think in 1947.

Q Tell about those negotiations.

A Well, I think we negotiated an increase in wages, I'm not sure of the amount, but we consummated an agreement.

Q Well, who did you negotiate with?

A In 1947?

[3631] Q Yes.

A Well, we negotiated with the northern coal operators.

Q Who did that consist of?

A Well, they were represented by three state associations, the general spokesman for the coal industry, recognized as the general spokesman for the coal industry as such for years was Mr. Charley O'Neal, a very eminent, competent, able man and I think in 1947 Mr. Joseph Moody, another distinguished representative who succeeded Senator Burke, became the representative of the southern operators.

Q Do you know if at that time they had formed the Southern Coal Producers' Association?

A I think that was the year that they had formed the Southern Coal Producers' Association and employed Joe Moody as their president.

Q And what did that association consist of?

A Well, it consisted of these various local associations in the southern coal-producing areas of the United States, some belonged, some didn't.

Q All right. Was there a joint conference in 1947?

A Well, we participated in every request that they made for us.

Q Did the North and the South—was it a

[3632] joint conference or was it separate negotiations?

A They participated jointly, I think, for a while.

Q And then what happened?

A Well, as usual, the South walked out and didn't consummate the contract.

Q What group made the contract first?

A Why, the North.

Q And then how was it consummated with the southern group?

A Just as soon as the contract was consummated in the North, why, we would get a call from the representative of the Southern Coal Producers' Association for a conference and we would arrange a conference at their convenience and they would make the arrangements to consummate the agreement, not any coercion on our part, they would rush forward to do it.

Q Has the Mine Workers ever excluded or tried to exclude any operator or any association of operators from the negotiations?

A Just the reverse. It is true, Counselor, we wanted them to come in and if they weren't there, they elected to do it themselves because there's not a coal producing company in the United States, if he is honest with himself, but what he didn't know he could come to the conference and be represented in the joint
[3633] conference if he wanted to.

Q All right.

A Big or little.

Q When was the next negotiation, the next contract?

A 1948.

Q And what occurred at that time?

A Well, we negotiated the 1948 contract.

Q Well, tell how the negotiations occurred.

A Well, we negotiated with the joint group and again they walked out and we negotiated a contract with the North, and then the southern operators participated in the conference and signed the agreement.

Q Do you recall what the main disputes were in '48, what issues were in dispute at that time?

A 1948?

Q Yes.

A Well, in '48 we were trying to—well, I don't think there was any major problems involved in what the dispute was at that time, only the wage structure and the continuation of the Welfare and Retirement Fund so that it could make awards predicated upon what it was established for and they were also opposed to it. They didn't want to activate it to the extent that it would yield any benefits to their employees. They wanted to continue the same old policy of not providing sufficient income, even when they were working, and
[3634] after they became incapacitated, after they had given their life's energy, vitality, talent, why, they didn't want to provide for a method of livelihood for them, they wanted them to go over the hill to the poor house, if necessary.

Q Now, during all of these negotiations with the operators, did they ever propose that they have different rates based upon different sizes of the coal company or different types of mines or different systems of coal?

A Why, Counselor, there is, I think, possibly seven hundred and seven—7,000 coal mines in the United States and the coal seams fluctuate, the quality fluctuates, some of it is lignite, semi-lignite, semi-bituminous, some of it is metallurgical coal, and some of the mines are gassy, some of them are wet, some of them are dry, some of them are 35-feet seams, some of them are 20-inch seams, why, it would be a physical impossibility that there has never been enough brains in the industry yet in its hundred years of existence that could ascertain a wage rate or a cost that would be comparable to give all of them an opportunity to market their coal on an equality with one another, it is ridiculous.

Q Now, let me direct your attention to 1949, and I want you to tell how this 1948 contract was terminated.

A That contract had an option clause in it.

Q What do you mean by that?

[3635] A Well.

Q What do you mean by "an option clause"?

A Well, it had a termination clause that we—provided that—we used to put a termination clause of a certain date a year, two years or three years, and that was the terminal date in the contract and it couldn't be extended unless it was done by a joint conference, but in these contracts that we negotiated in later years we had—it had a firm agreement for a year and in order to terminate it you had to give 60-days notice in compliance with the federal law and by the contract itself, 60- or 30-day notice.

In 1949 we had no intention of terminating the agreement. We thought we would let it extend, let it run until such time that it may be to the benefit of the economy of the country, of benefit to the industry, and especially of benefit to our members that we represented, but Mr. Moody, the president of the Southern Coal Operators' Association, he notified us, he served notice on us terminating the agreement. Of course, we couldn't do anything else.

Q Do you remember what day that was?

A I think it was in May, 1925.

Q 19—

A (Interposing) The 25th of May, 1949.

Q All right. Then what happened?

A Well, he terminated the agreement and

[3636] he asked for a conference and the president, the president of our organization and the president of the Southern Coal Producers' Association exchanged communications and perhaps telephone calls and they arrived or they agreed to meet in Bluefield, West Virginia.

in a joint conference with the Southern Coal Operators' Association.

Q And at this time was the northern operators and all of the other operators, was that contract still in existence and effect?

A The northern coal operators hadn't served the termination notice with us.

Q Had the Mine Workers served termination notice?

A No, not then.

Q Did you participate in the Bluefield conference?

A Yes. I was in charge of the negotiations with the Bluefield conference for the United Mine Workers.

Q All right. Tell what occurred there.

A Well, contrary to the belief of many of our citizens, that is, not familiar with these joint wage conferences, we had participated in a number of conferences over the years where we would meet in what we called mass meetings.

It would be about 200 representatives of the coal industry convening at some hotel and about 200 representatives of the Mine Workers called the international policy committee. As President Boyle so ably [3637] explained here today.

The president of the United Mine Workers of America and his associated officers would get up and present the demands that they thought ought to be inserted in a successor contract.

The conference was open to the public. The metropolitan presses would be lined across the convention hall, almost every newspaper of any consequence in America would be lined at the press table for the stage where the presentations would be made by President Lewis and the vice-presidents and myself.

After we would present a list of demands to the joint

conference, some representative of the coal operators, generally Charley O'Neal, would get up and move that the conference recess for two weeks while they prepared their reply to the demands of the United Mine Workers of America.

Charley O'Neal had a very competent statistical department that followed him around, statisticians that occupied one of the floors generally in the hotel that we would be meeting at, and Charley would confer with them over the 2-weeks' recess that we agreed to, then he would address the conference, presenting figures and facts, as he called them, that the cost of the demands made by the United Mine Workers of America would increase the cost of coal to the American consumer to the extent of 500 million dollars or 750 million
[3638] dollars. He never got up to a million because that was the last conference we had when he said it was 750 million dollars and the next morning or that afternoon, generally because the statement was handed to all of the metropolitan press when the conference convened and the representatives of the press would break for the telephone almost in mass after it was handed to them with the caption on the prepared statement that O'Neal was going to make to the joint conference, the caption that the request or the demand of the United Mine Workers was going to cost the American consumers $750,000 or $500,000.

Q You mean thousands or millions?

A I mean 500 million dollars.

Well, we put up with that and, of course, after it was discussed and then we would answer it and point out, but the facts that we presented never got on the front page. If there was any comment made on it, it was by some independent writer in some eleventh page in some newspaper in the United States.

So we decided we would change our method of negotiation, that we wouldn't present any demands to the coal operators, we would get authority from the international policy committee that would authorize us to negotiate the best contract possible, and the next time we met O'Neal and his associates with the 200,000 or
[3639] 200 coal operators, we suggested to Charley and his friends that the contract is going to expire on April the 1st, 19 so and so, "They are your employees. We represent them. We would like to know what you are going to pay them after April the 1st when this contract expires and if it is a sufficient amount that we think that it warrants us to recommend it to them, we will give that serious consideration and take it back to them. We are only their servants."

And Charley's statistical machine went out of operation and it hasn't been functioning since that date.

That's what brought on this—that's what brought on this changed method of negotiating the successor contracts.

The coal operators themselves, they themselves wanted to do something that would eliminate this adverse publicity that had penetrated every section of our country and that the coal industry was being blighted by wrong information and that there wasn't some way that the United Mine Workers couldn't accommodate themselves in some arrangement that we could work out contracts without that publicity.

Q Well, did that occur, though, in the Bluefield conference?

A Oh, in the Bluefield conference we had the usual open conference. Most every coal miner or businessman in Bluefield could walk in the conference and listen to Joe Moody make a speech, or any other coal
[3640] operator make a speech that wanted to.

Q What occurred at the conference then in Bluefield

A Well, we suggested that he—he terminated the agreement. "We are here to listen to any suggestion that you have on your mind to write into a successor contract."

And everything that they would suggest meant reducing the wages, reducing the Welfare, doing away with the pension plan, wanting to restore the differential between the North and the South, in general emasculate the contract that they had been working under that he had terminated.

Q Was anything—

A (Interposing) And the conference went on and on.

Q Was there anything said about the "able and willing" clause?

A Yes. They were opposed to the "able and willing" clause.

Q Memorial periods?

A Memorial periods.

Q Mine safety provisions?

A Mine safety, all of them.

Q All right. Now, sometime during this period did the Mine Workers give notice of terminating the contract to the rest of the industry?

A Yes, we terminated the agreement with [3641] the North.

Q Why was that done?

A Well, if we wouldn't have done that, it would have created a condition that would be intolerable and we thought it advisable to terminate the agreement so it would occur with the termination of the southern agreement.

Q All right. Were you able to reach an agree-

ment with the southern operators? Before I get to that, where did this northern group meet?

A They met in the Greenbrier Hotel at White Sulphur.

Q White Sulphur Springs, West Virginia?

A Yes, sir.

Q Did you participate in that conference also?

A More or less, both of them.

Q All right. Were you able to negotiate a contract, either at White Sulphur or at Bluefield?

A No, we were not able.

Q Now, at some time did the Mine Workers institute or call a 3-day work-week?

A Well, Counselor, we agreed to recommend that the men work three days a week during certain periods of when the negotiations was going on.

Q Did the Mine Workers offer to work pending the settlement of the dispute if they would make it retroactive?

A That's one of our standard requests when we entered into these conferences, that if we are
[3642] not able to consummate an agreement at the expiration of the contract, that if any successor contract is made, that it be retroactive to the date of the expiration of the contract if our people work. They always opposed it.

Q All right. Now, tell us about the 3-day work-week, when did it occur and what was it about?

A When the 3-day work-week was established or agreed to or permitted it was because there was the clamor in the public press that there was a shortage of coal, that the Atlantic Seaboard was short of coal and that hospitals and public utilities that were burning coal, coal-burning plants was running out of coal.

Well, we had the storage figures published by the

government and the information that we had collected ourselves about the amount of tonnage that was on top of the ground and available to them, but in order to eliminate any criticism and to eliminate any apprehension that some man that wasn't able to buy a ton of coal that was available until he—unless he paid an exorbitant price for it, that these coal companies were asking for it out of these store piles or out of these stockpiles, we thought it advisable, in order to relieve any apprehension about the shortage of coal, we suggested that if they would pay the rate provided for in the expired or the terminated contract that the men would work two or three days a week and they did and operators who employed [3643] those men and worked them two or three days a week defaulted on their Welfare and Retirement Fund and that was mostly from the South that said that they didn't want to pay it and they didn't pay it until they were compelled to pay it later.

Q Was there any consideration to the National Emergency Injunction provisions of the Taft-Hartley Act?

A Sir?

Q Was there any consideration given to the National Emergency Injunction provisions of the Taft-Hartley Act?

A Well, of course, those provisions are always subject matters that we give consideration to.

Q Well, what was that?

A In what way do you mean, Counselor?

Q What consideration did you give to it?

A Well, they went in and got—you mean seeking the injunction?

Q No, the 3-day work-week, what effect does the 3-day work-week have to do with the National Emergency Injunction provision, the 80-day?

A No.

Q Was there a clamor at that time for the government to get an injunction, an 80-day injunction compelling the Mine Workers to work?

[3644] A Well, you see, those injunctions under the Taft-Hartley Law is asked for because of some emergency and they were creating, through the public press, that there was an emergency or a shortage of coal. In order to eliminate any of that argument they produced coal three days a week, although they had plenty of coal up on the ground, and, of course, that eliminated any argument about it at all.

* * *

[Printer's Space]

[3646] MR. OWENS: Yes, your Honor. But before I do that I would like to introduce into evidence a bound volume of all of the contracts, the National Bituminous Coal Wage Agreements from 1941 until the present time so they will all be in one exhibit. Mr. Rowntree has agreed to that.

THE COURT: Very well.

(The wage agreements referred to above were marked D369 and received in evidence.)

* * *

Q Mr. Owens, yesterday when we recessed we were discussing the 3-day work week.

Did the 3-day work week apply to all of the mines in the United States?

[3647] A No. It only applied to the mines east of the Mississippi River.

Q What was the purpose of that?

A Well, there wasn't any—the mines west of the Mississippi River were operating and they weren't out on strike.

Q Previous to that none of the mines had been out on strike when the 3-day work week was instituted?

A The contracts in the West was continued and they were operating.

Q Now, did the Mine Workers make as a bargaining demand of the operators included in the new contract a 3-day work week?

A Counselor, that was done for the express purpose—it was a negotiating policy that we pursued for the purpose of bringing about a successor contract, it had no bearing, either directly or indirectly, on our intentions or requests to be inserted in the contract. The fact of the matter is we wouldn't accept a 3-day work wage con-

tract if it had been offered to us. The Mine Workers were not interested in a 3-day wage contract then or now.

Q Well, how long did the 3-day work week stay in effect?

A Well, I can't recall the number of weeks that it was in effect but it extended until, I think, some
[3648] operators who were operating their mines under those arrangements did not pay the Welfare and Retirement Fund as provided for in the contract that had been terminated and that caused a dissatisfaction among the men and they ceased work themselves, it brought about turmoil and dissatisfaction and eventually the mines, I think, in the latter part of the year closed altogether.

Q All right. Did the negotiations at Bluefield and at White Sulphur Springs continue throughout the year?

A They continued until we broke up or left Bluefield and went to Washington. There had been two injunctions issued, there had been a presidential emergency board established and they were meeting separately with us in order to make it. At the convention of the Southern Coal Operators they suggested that we meet in Washington and the Southern Coal Producers Association Negotiating Committee, headed by Moody and his associates, met in the Mayflower Hotel, while the Northern Coal Operators were meeting in the Statler Hotel, both under the supervision of one or more of the presidential appointed emergency board, Mediation Board, consisting of Mr. Cole, Mr. Dunlap, from Harvard University, and I think the present Secretary of Labor, Mr. Wertz.

Q All right. Was there ever—

A (Interposing) I think I am right.

Q Was there any joint—

[3649] A (Interposing) I may be mistaken that that is exactly the names but I think there were three.

Q Was there any joint negotiations which included

the operators of both groups in Washington?

A Yes, we were directed, directed under the Court to meet in joint conference and the operators, the Southern Operators even walked out of that conference when we convened jointly in the Statler Hotel. I can see that in my mind's eye right now just as vividly as if it was yesterday, the distinguished representative of the Southern Coal Operators doing his usual thing, walking down, leaving the conference before we were able to consummate the agreement and he was ordered back in.

Q He was ordered back in?

A Told to go back in and we finally consummated an agreement.

Q Well, who ordered him back in?

A Well, the Court, Federal Court.

Q All right. Then what happened, were the mines working at this time?

A I think that we had complied with all of the orders of the Labor Board and that the injunctions were sought for, like eliminating the "able and willing" clause and the memorial period and the clauses that the operators were insisting that was a violation of the Taft-
[3650] Hartley Law. We purged ourselves of all of those alleged violations of law and the Court found us not guilty and directed negotiations to proceed and when he found us not guilty, I think on the second, and in two days after he found us not guilty, why, we negotiated the contract.

Q Well, "found us not guilty" of what, what do you mean, "found us not guilty"?

A Of violating or not negotiating in good faith.

Q Well, was there at that time the 80-day national emergency, 80-day injunction in effect?

A Yes.

Q Did the mines return to work after that injunction was issued?

A Yes, they did return to work in conformity with the injunction.

Q But during this period that we are talking about wasn't there contempt proceedings instituted against the union for not returning to work?

A Yes, but they charged us with not complying with the order to return to work in good faith.

Q And?

A And charged us with violating the injunction.

Q And is that the charge you are saying that we were held not guilty of?

A That's right, sir.

[3651] Q And do you recall the date of that?

A No, I don't have the dates in mind.

Q But it was several days after that then the 1950 contract was negotiated and executed?

A That's right.

Q Now, do you know Mr. Stanlee Hampton?

A Why, I have been acquainted with him and I was looking forward to seeing him while I was down in his beautiful country that he has told me about so many times. I have been acquainted with this distinguished coal operator for a number of years, in fact, he was—he had the privilege of all of the negotiations as one of the sergeant at arms in the wage conferences for a number of years and I think he, more than any one operator of any consequence, outside of perhaps Charlie O'Neal or one or two other gentlemen I could mention that has gone to his reward, sit and listened to more discussions in these wage conferences than any other operator I can think of at the present time in the last 35 years.

Q Did he participate in the negotiations of 1949

and 1950?

A Well, I can't recall whether he participated in any negotiations as such. I don't think that he was one of the subcommittees or committees that they selected that negotiated with me at Bluefield.

[3652] Q But his association and Mr. Hampton, were they present during these negotiations?

A Yes, sure they were there.

Q All right. When was the next contract or when was the next amendment to the 1950 contract?

A I think the next amendment was 19—you mean what clause do you mean?

Q Well, there was an amendment in 1950 as shown by the exhibit. Will you tell us about that?

THE COURT: 1950?

MR. OWENS: 1951, excuse me.

A What amendment do you mean in 1951? What do you want me to refer to?

Q Well, was there an amendment in 1951?

A On wages, termination of the agreement?

Q Yes.

A The amendment I think you referred to is in 1950.

Q Well, after that contract?

A Then in 1952.

Q After the 1950 contract was signed, when was the first time it was amended?

A 1952, outside of the wages, termination agreement.

Q Let me direct your attention to the amend-

[3653] ment of January the 18th, 1951.

A Yes.

Q You have a copy of the contract before you?

A I have it before me, Counselor.

Q Was an amendment in 1951?

A Well, it carried forward the—I am lost to know what amendment you refer to.

Q The amendment of 1951. Let me show you the contract, it's marked Exhibit 369, and ask you if this wasn't an amendment, not the 1950 contract, in 1951?

A Oh, yes, yes, they were all amended, yes. The wage agreements were amended January the 18th, 1951. I thought you were referring to some specific—

Q (Interposing) All right. Prior to this amendment, do you know when the Bituminous Coal Operators Association was formed?

A I think after the 1950 contract was negotiated, I can't recall the exact time or date.

Q Do you know, generally speaking, who composed or what the BCOA was composed of?

A Well, it was composed of primarily, in the beginning I think it was composed of operators that weren't affiliated with the Southern Coal Producers Association, mostly the captive tonnage, Pennsylvania's tonnage, Ohio's tonnage, and some of the tonnage in
[3654] Indiana and Illinois and I have never saw a list of the coal companies that are affiliated with the Bituminous Coal Operators Association and I am not in a position to verify who all belongs to it.

Q And this was the association headed by Mr. Harry Moses?

A Yes, that's right.

Q Was that composed of the Southern Coal Producers Association or the Northern group?

A No, sir.

Q Which one was it?

A Northern.

Q All right. Now, tell about the negotiations that led up to this amendment of January 18, 1951, how was

that amendment negotiated?

A The amendment to the 1950 contract was after many sessions of conferences with representatives of the Bituminous Coal Operators Association. Harry Moses was employed as the representative of the Bituminous Coal Operators Association. He established his office in Washington. His duties were many. He conferred with the Federal Government on safety, he watched legislative questions that affected the coal industry, he compiled statistics and kept complete records of all of the production and was vitally interested in the safety program of the industry, which was being considered by mining departments all over the United States [3655] where coal was produced, and his duties were many. Among them was to represent the Bituminous Coal Operators Association in negotiations with us as a spokesman.

He informed us that he had authority to confer with us. It was a definite understanding that he could call in for any conference a scale committee that they had created under the Bituminous Coal Operators Association that comprised practically the same representation that previously negotiated the contracts with us as a group.

And after discussing these questions with Moses formally and informally, then Mr. Moses would request that we meet with a committee representing a scale committee, representing his group.

Q Do you recall who was on that committee?

A Well, there was Dr. Potter, was one of the outstanding persons representing the operators in the East, and I just forget the names of them, they come at different times. The Ohio operators, generally the spokesman for the Ohio operators was Mr. Lib Ireland generally and I can't recall the name of the individuals that would appear in those conferences with us representing the operators.

Q Well, who appeared on behalf——

A (Interposing) And generally the head of the Pittsburgh Consolidated Coal Company, different men who were head of the Consolidated Coal Company, like George Love and his successors, and President Lewis,
[3656] Thomas Kennedy and myself would meet with them and we'd discuss again what they had formally and informally in these conferences when they would meet and finally after many conferences, why, we would agree upon, tentatively agree upon the terms of a contract, then President Lewis would designate one or more of us to sit down with the representatives of the coal operators to draft the agreement. That was negotiated, read, initialed with the understanding that both sides should tentatively agree to it and they had to go back to their various associations to get approval. We had to go back to our policy committee to get approval to consummate the agreement.

That isn't anything new since 1950 because that has been more or less the policy that has been in effect for 40 years and only these large conferences that I spoke to yesterday, they would be broken down to maybe 16 on each side and then to 8 and then to 4 and then perhaps three of us, the International officers and the chairman of the conference, and spokesmen for the other two, and we would confer and then it would become necessary for the president of the United Mine Workers, not only John Lewis but his predecessors, John Hayes, John P. White, Tom Lewis, John Mitchell, Mike Rachford, any one of them, Tom Kennedy, and it will become President Boyle's duty maybe to meet and discuss what we were unable to resolve where there would be three on each side or six on each side
[3657] and they may be able to resolve and come to a meeting of the mines that he, as president of the organization, and the operators' selection may bring back to the group of three, six or eight and make the suggestions that they thought, after deliberating with one another, added

to what deliberations or what contributions we had made i the 3-man on each side or the 6-man on each side, and arrived at a conclusion. That has always been the policy I think it is the policy in almost all large negotiations, whether it is a Federal Government or what it is, whether it is before Congress, full committees, the full committe is reduced, some time the majority leader and the minori leader get together and decide upon what they will recomm to the Congress or the United States Senate, they will do in open sessions. There is nothing new about that. It i a procedure followed for the purpose of bringing about a peaceful settlement of a wage controversy that will be ben ficial to the public, beneficial to the investment in the indu try and beneficial to the men who work in the coal mines.

Q I note that the 1950 contract termination date was June the 30th, 1952. Can you tell us why there was an amendment prior to that expiration date in 1951?

A You mean in the termination date in 1950 contract

Q The '50 contract as shown in the exhibit [3658] had a termination date later than January the 18th 1951. Why was there an amendment prior to tha termination date?

A Well, we thought it advisable to try to negotiate a contract prior to the termination date provided for in the 1950 contract. This was a continuity of production withou interruption or without any anxiety by the public that there was going to be any interruption of coal like there had been in 1949 and '50.

Q Why was this of particular importance in 1951?

A Well, I think there was turmoil in Korea, like the Korean War, and like we have always done, tried to relieve any apprehension about coal being available to pro secute any war that this great country of ours may be participating in to a successful conclusion.

Q Now, did the Coal Producers Association, or any

other association, attend these conferences with Mr. Moses?

A No.

Q Did they subsequently execute the 1951 amendment?

A Yes, sir.

Q Will you tell how that occurred?

A Well, after negotiations with them, they consummated the agreement.

Q Let me ask you why that you began negotiations with the BCOA rather than some other group or

[3659] some other individual operator?

A Well, that's obvious to anybody that is acquainted with the coal industry. The Southern Coal Producers Association, I am sure they would testify if they were here that they would never make an agreement, they would never make an agreement with us for any wage scale, any length of hours in the day, any number of days in the week, large or small, unless they knew what the contract was going to be in the captive mines and in the Northern coal mines and that has been their position, it has been their policy, it has been their—it has been demonstrated by all of their action and I think there's some merit to their action.

Q Will you state why the Mine Workers didn't initiate negotiations with a number of the smaller companies or the middle-sized companies or even larger companies that did not belong to an association?

A Well, because they represent the preponderance of tonnage in the United States.

Q The smaller operators represented the preponderance of tonnage?

A No, the Bituminous Coal Operators Association, and those are the groups that are spoken of in the industry, recognized in the industry by the government. Why, every President of the United States from Woodrow—from Teddy Roosevelt's day, Woodrow Wilson, Warren Harding, Hoover,

[3660] Roosevelt, Truman, and in every controversy since 1903 the President of the United States in his dealings with representatives of the coal operators as such would confer, either directly or through his representatives, with the groups representing the preponderanc of production in the industry.

Q Do you know what percentage of the tonnage that was represented in the negotiations of 1951?

A I don't recall the exact tonnage but I think it represented perhaps 60 or 62 per cent.

Q Let me ask you if you know whether or not in 1951 that there were other wage increases being granted in other industries at this period of time?

A Oh, yes, Counselor. The wage increases that we received——

Q (Interposing) I am speaking of 1951.

A 1951, I refer to 1951. There were other increas negotiated in other industries in the United States.

Q Do you know whether or not that there were any wage regulations in the offering in 1951 by the government

A Well, I think that the Korean War brought on regu lations, I don't just remember the details of it.

Q All right. Now, I direct your attention to the 1952 amendment to the contract and ask you to tell about the negotiations leading up to the execution of the

[3661] 1952 amendment?

A Well, we proceeded practically the same way, by conferring with the representatives of the National Bituminous Coal Operators Association, which concluded in the consummation of the present agreement as it was accep by the Southern Coal Operators Association.

Q Do you recall how long those negotiations were carried on?

A I don't recall the dates, but a considerable time.

Q Do you know why there was not the publicity and

the fanfare to these negotiations that you had during the '40s and the previous years?

A Yes. It was because the industry, and rightfully so, they didn't, in relating yesterday's picture of what took place, I didn't relate what really happened behind the scenes when these metropolitan newspapers would come out showing that the request made by the coal operators or by the miners to be quests for increases in wages and other items, that it would cost $500 million or $750 million dollars, whatever Charlie O'Neal's statistical Bureau would say it would be, then every large consumer of coal in America would send a wire or their representative to the hotel or to the building where we were meeting and they would have banking interests that coal operators had loans made to them through contact the negotiators
[3662] representing the industry. They would get consumer groups that would be convinced that if this 750 million or 500 million dollar increase in the cost of coal would be passed on to the consumer, that that would cost each family so much money and they would get consumer groups to indirectly and directly contact the negotiators in the conference.

They would get their representatives in Congress if we were negotiating in Washington, to keep them advised as to what procedure or what was going on in the negotiations and they would attempt to coerce the coal industry to not grant any increase in wages and other manufactures in the country that was dealing, either with labor unions or wasn't dealing with labor unions, "Don't make any concession to the United Mine Workers in this conference because if you do we'll have to make those concessions to our employees and that is contrary to the policy of the Chamber of Commerce in our city. We represent them. We want to keep the wages down."

And they polluted these conferences with men taking

rooms in the hotels and when the representatives of the coal operators would leave the conference they would be buttonholed and told not to make any concessions, "Don't give in to them because if you do," if you had a loan in the bank, his company had a loan in the bank, the loa
[3663] would be called. If he owed any money on his machinery for some manufacturer producing machinery, why, pressure would be brought to bear upon him through that.

Q Well, what caused a change?

A And all of those things brought about the necessity of eliminating all of this publicity when the Mine Workers contract was expiring. The industry wanted to eliminate that publicity because it was hurting the industry. It was convincing some consumers of an energy you couldn't rely upon, the production of coal. The gas industry would go to large consumers and say, "They are going to have a strike. The price of coal is going to be increased. Convert your plant into consuming gas."

The oil industry says, "You can't rely upon coal. You see what the New York Times says today? 'The cost of coal is going to increase 500 million,' so convert your plant to oil. Use oil brought in from Venezuela."

Until the point it destroyed the consumption of heat units upon the Atlantic Coast of at least 55 million tons of coal along the Atlantic Coast, it is taken out of this territory down here, this Southeastern part of the United States that if it could get that market that rightly belongs to it and that this section of the country would be prosperous as far as the coal industry is concerned, 50 million tons of coal could go up the Atlantic Coast and be consumed
[3664] by our people, but instead of that it is brought in from foreign countries and when they lose that 50 million tons of market that rightfully belongs in this West Virginia and Southeast Virginia and Tennessee and Kentuck

the operators in this territory don't go out of business, they go from the natural market that they should have and did have and it backs up into Northern West Virginia, into Ohio and into Western Kentucky and into Pennsylvania and blights the entire price structure of the entire industry, so the coal operators and the coal miners and the Federal Government acquiescing in, encouraging the conferees to bring about negotiations without this great nationwide publicity campaign that was destroying one of the basic industries, causing turmoil and unrest in a large segment of our population and that, Counselor, brought about the policy that we would confer without any publicity, even to the extent without even notifying the government that we were meeting until it was required under the law that we should notify them and it has brought about a condition in the industry that has been praised by the Presidents of the United States.

The policy has been praised by the United States Senate and the United States Congress. It has been praised by editorials written in every major newspaper in the United States. It has been praised in almost every reputable magazine that is published in the United States
[3665] and I think it is a wonderful policy if two segments of our industry, whether it be coal, whether it be automobiles or anything else, can devise within the industry a group that can speak authoritatively in such a manner that will bring about the consummating and the acceptance of a contract to the employees and the employers without any interruption of production, without any publicity that would adversely affect the economy and affect not only the United States, because anything that affects the economy or possibly affecting the economy in the United States affects it all over the world.

Japan is worried about the coal, Germany is worried about the coal, the Common Market is worried about the

coal, all of these allies, Canada is worried about the coal. Our entire economic structure—and it is a fearful relation ship in this turbulent world—is aroused when they think there is not going to be fuel energy available to man these industries, either directly or indirectly, involves the peac the preserving of our American institution, our ideals, they are disturbed about it and they are pleased when we can work out these relationships in the manner that we have and I think it is the most successful and I think it is being encouraged to be put into effect in practically all of the basic industries in America today.

Q Mr. Owens, do you recall what wage [3666] increases were granted in '52?

A I think it was, let's see, 70 cents and a dollar sixty, $1.90, I think it was.

Q Was that the original demand that the Mine Worker made for $1.90?

A No, I don't think it was the original request that we made. I think perhaps we discussed $2 across the board.

Q Then what do you mean by the 70 cents, and just explain what you mean.

A Well, in the 1950 contract a 70 cents increase, in the 1951 contract I think it was $1.60; in the 19—don't hold me to these figures without I look at it but I think it was $1.90 in 1956.

Q Was this $1.90, was that staggered, did the $1.90 go into effect all at once?

A In 1952?

Q Yes.

A I think it was so much for so many months.

Q You mean you think it was 70 cents for so many months?

A Yes, so much for the next——

Q (Interposing) And $1.20 at another period of time

[3667] A That's right.

Q Staggered over the period of the contract?

A That's right.

Q Let me ask you, when the Mine Workers wanted an increase in wages, why didn't you go to some individual operator, a small operator at that time, or a middle-sized operator, and ask him to negotiate the contract?

A It would just be wasting his time and questioning his intelligence.

Q Why do you say that?

A Why? Because we know that he wouldn't even — I think that most of them would laugh at us, I am sure he would.

Q Why?

A Why? Because he wouldn't even consider negotiating a contract with us.

Q Why wouldn't he consider making any contract with you?

A Because he wouldn't represent any segment of the industry and he would want to know what the basic rate would be before he would do it.

Q In addition to the increase in wages there was an increase in the Welfare Fund, I believe?

A Yes, 40 cents.

Q To 40 cents a ton. Now, did that increase have to be approved?

[3668] A Oh, yes.

Q And was that approved?

A Yes.

Q Was it approved in the beginning?

A No, not in the beginning.

Q What was that about?

A Well, the question of the amount of increase had to be approved by the Price Administration, OPA.

Q The Wage Stabilization?

A The Wage Stabilization Board.

Q Did they approve the $1.90?

A No, not at first. Finally it was approved by direction of the President of the United States, President Truman.

Q All right. Let me call your attention to another section of that contract, the '52 amendment, which is called "Application of Contract to Coal Lands," which is found on Page 3 of that contract. I want to read the first sentence of the paragraph, "As a part of the consideration for this agreement, the operators signatory hereto agree that this agreement covers the operation of all of the coal lands owned or held under lease by them, or any of them, or by any subsidiary or affiliate at the date of this agreement, or acquired during its term which may hereafter (during the term of this agreement) be put into production."

Now, can you tell me what is the purpose of
[3669] that sentence?

A Yes, Counselor, the industry for a number of years, some operators would sign the contracts and then they would subcontract with some producer and close their mines down or work them two or three days a week, create sales agencies and market coal produced from this subleased coal or contracted coal that was produced by operators that weren't signatory to the agreement and it would, in effect, vitiate the agreement to put in effect its full application and it would leave signatory employees to the agreement idle while they purported to sign a contract to employ their employees for a stipulated period and keep them sitting in their company houses and their mines closed down while they were buying coal from non-signatory coal operators to fill their demand from some consumer.

Q Well, the first sentence doesn't refer to that, in that paragraph, to any subcontracting, that's the second sentence. What is the purpose of the first sentence?

A Well, that they won't lease out any.

Q Well, the leasing is on the second sentence. I will read that now, "Said operators agree that they will not lease out any of the coal as a subterfuge for the purpose of avoiding the application of this agreement."

But the first sentence does not refer to sub-
[3670] contracting.

A Well.

Q Or leasing.

A Well, it simply says that the signatory agrees that this agreement covers the operation of all the coal lands owned or held under lease by them, that means that they contract that the contract that they sign covers all of the coal land held by them or owned by them, they agree to it.

Q State whether or not there was any problem of signing a contract and then instead of operating their mine for that company forming affiliates or subsidiaries or some other type of business?

A That's the truth of it, in some instances they have been known to be interested in banks and they would cooperate in lending money from banks to some coal operators to buy equipment in order that they could sell his coal under some corporation that they would create under some subterfuge name, sales agents, some of the largest — one of the largest ones was in Canada operated by coal producers in America, a number of them scattered all over the United States and we tried to prevent that by this clause in the contract.

Q All right. Now, in the second sentence, which I previously read, which I will read it again, "The said operators agree that they will not lease out any coal lands as a subterfuge for the purpose of avoiding the
[3671] application of this agreement." Do you know when that particular sentence was first included

in the contract?

A Oh, I think it was first included, I think, in 1943, we had some language in the Illinois agreement, the Illinois agreement that was approved by the Labor Board.

Q And then was that included again in the contract that was negotiated in 1945?

A Yes, in '45.

Q All right. Do you recall the negotiations in 1955?

A Yes, sir.

Q In '56?

A Yes.

Q Now, did you participate in those negotiations?

A Yes, sir.

Q Were those negotiations carried on in a similar manner to '51 and '52?

A The only difference was that we negotiated the contract under about the same group, I finally—I think it was finally signed down in the Commerce Building in Nashville, if the name of the building is proper, I think it was signed down there.

Q In Nashville, Tennessee?

A In Nashville, Tennessee.

Q Do you know when Mr. Moses died?

[3672] A Well, I think 1956, the 1956 conference, I think, was the first conference that Mr. Fox, who succeeded Moses, participated in when he negotiated the contract.

Q Now, during those two conferences, what period of time did it take to negotiate these?

A Well, we would always suggest to the representatives of the industry that we ought to start a meeting or conferring to see if we couldn't work out a successor contract without any cessation of work and sometimes they would have to confer with their associates and arrange the time and we would accommodate ourselves to what-

ever arrangement would be satisfactory to the industry, whatever time and place that would be satisfactory to them, we would accommodate ourselves to their arrangements and we would meet when they wanted to as long as they wanted to, generally up to their pleasure.

Q Was their disagreement over the terms of that contract?

A There was always disagreement over the questions raised and discussions about them, but we finally, after discussions we finally would agree upon a contract.

In all my years of attempting to negotiate a contract, or all of the years that I know that others on subcommittees attempted to negotiate a contract, negotiate contracts, it took many conferences to have a meeting of minds, [3673] conferred with many interests, especially the coal operators had to confer with many interests. It takes time to crystalize an opinion because there's so many segments interested in the coal industry and you have got to confer with men in Boston, men in Nashville, men in Tennessee, all over the United States, and it takes time to work these things out.

We accommodated ourselves to whatever arrangement we can in order to bring about a settlement.

Q All right. Did you participate in the 1958 negotiation?

A Yes, sir.

Q Which I believe included wage increases?

A Yes, sir.

Q And increase in vacation pay?

A Yes, sir.

Q And in addition to that the contract contained what is called a "protective wage" clause. What was the purpose of this clause?

Q Well, it was just a continuation of our agreement to try to get the industry to carry out in good faith, as we

stated many times, the terms of the contract instead of signing an agreement and then by some device they had set up market coal from some other production and leave their mines idle, which destroyed the work opportunity of the men under the terms of the contract, not only destroyed the work opportunity of their daily work but it destroyed the pension equities that was accruing to them when they would superannuate in the senior years of their life, this that they were entitled to under the contract as an applied provision that would be accrued to them, that would accrue to them and it would be there for them.

[3674]

Q How would that destroy that?

A Why, marketing coal and not paying any money into the Welfare and Retirement Fund. Of course, every ton of coal that was marketed by a signatory coal operator into a market that wasn't paying 40 cents into the Welfare and Retirement Fund, it certainly reduced the equity of his employees that he signed and implied by the contract and the rules set up by the Welfare and Retirement Fund that they have selected themselves one of the trustees and has been approved by the Federal Court, that act in itself is a contributory factor to reducing the equity that he anticipated when he superannuates at the age provided for by the rules of the trustees and the operators' representative sits on that, written into that contract as trustee of the board or trustee of the Welfare and Retirement fund.

Q All right. Now, Mr. Owens, let me direct your attention to Paragraph A of the '58 agreement, which reads as follows:

[3675] "During the period of this contract, the United Mine Workers of America will not ——

A (Interposing) Counselor, what ——

Q (Interposing) It is on Page 2.

A What paragraph?

Q Of the '58 amendment.

A What paragraph?

Q I am reading Paragraph A.

A Of the protective wage clause? All right, sir.

Q Do you have that?

A Yes, sir.

Q It reads, "During the period of this contract, the United Mine Workers of America will not enter into, be a party to, nor will it permit any agreement or understanding covering any wages, hours or other conditions of work applicable to employees covered by this contract on any basis other than those specified in this contract or any applicable district contract. The United Mine Workers of America will diligently perform and enforce without discrimination or favor the conditions of this paragraph and all other terms and conditions of this contract and will use and exercise its continuing best efforts to obtain full compliance therewith by each and all the parties signatory thereto."

Will you explain the purpose of that particular paragraph?

A Well, the purpose of the clause in the [3676] protective wage clause, the United Mine Workers of America's executive officers had many experiences with the protective wage clause dating back to the first one that was inserted in the contract in 1941. Many statements have been made and have been published and many men believe that this protective wage clause prevents —this Section A prevented the United Mine Workers under the contract to negotiate a contract, any contract other than the terms set forth in this contract.

We wanted to make it absolutely clear so that all could see that in 1950—can I refer to it in my discussion?

Q No, let's stick to the Paragraph A. What was the purpose of Paragraph A.

A The paragraph was for this purpose, that under

the terms of this contract that we pledged that we will not make any contract, we will not make any arrangements under the terms of this contract for less than is provided for in the contract under this contract.

Q And to whom?

A To the signatories, to the operators signatory to this contract.

Q Was there any agreement or understanding by that that the Mine Workers would not go to some other employer not covered by the contract and that they would agree not to make a contract with them other than this national agreement?

[3677] A Oh, no.

MR. ROWNTREE: Objection, your Honor. It calls for a conclusion, it is leading, suggestive and the contract is the best evidence.

THE COURT: Sustain the objection.

MR. OWENS: Your Honor, if there is any ambiguity to a contract——

THE COURT: (Interposing) I believe your question was leading, Mr. Owens. In other words, I think it is the form of the question that was objected to.

MR. ROWNTREE: If your Honor please, we also maintain that there is no ambiguity in the contract.

Q State whether or not this clause prevented the United Mine Workers from making another contract with some other employer or group of employers in another bargaining unit.

A No, sir.

MR. ROWNTREE: We maintain our objection on that contract, that the contract is the best evidence, it speaks for itself.

THE COURT: Well, overrule the objection.

Q Mr. Owens, in 1950, or any subsequent years, have you, or any of the officers or the United Mine Workers

ever made an agreement with the operators that they would impose this contract upon any other group of operators?

[3678] A No, sir.

Q Now, there is contained in the '41 contract under the title of "protective wage", what is sometimes commonly referred to as the "favored nations" clause. Do you know if that was taken out of the contract?

A Yes, sir.

Q When was that taken out?

A 1950.

Q What is the "favored nations" clause?

A With the Court's permission I will read it, the 1941 language, "If the United Mine Workers of America make a wage agreement during said period covering wages or working conditions with any person, association, or district within the Appalachin area, on a basis more favorable than above, then this agreement shall be modified so that all parties to this agreement shall receive all the benefits of such more favorable wage agreement. The International Union, United Mine Workers of America, reserves the right to call and maintain strikes throughout the entire area covered by this agreement when necessary to preserve and maintain the dignity and competitive parity of this agreement. Such strikes shall not be deemed a violation of this agreement. The International Union will give reasonable notice to all parties of any such action."

That is the 1941, known as the "favored nation"

[3679] clause in the contract. It has been widely published and disseminated by operators, contrary to the terms of the contract, that that section is still in the contract. It is not in the contract, it was deleted in 1950.

Q Well, I will read the paragraph that deletes that, it is in the "miscellaneous" section, Paragraph 2.

A I have it here.

Q Of the contract which reads as follows: "Any and all provisions of any contracts or agreements between the parties hereto or some of them, whether national, district, local or otherwise providing for a protective wage clause and a modification of this agreement or said agreements if a more favorable wage agreement is entered into by the United Mine Workers of America, are hereby rescinded, canceled, abrogated and made null and void."

Mr. Owens, referring now to the rest of the protective wage clause, was there any purpose or agreement or intention by this clause to drive any coal operator or any group of coal operators out of business?

A No, sir.

Q I also wanted to read that this clause was taken out in the contract of 1948 in the "miscellaneous" section, Paragraph 2, and also the no-strike clause was taken out by the '48 contract, was not carried forward in the '50 contract, so it was reiterated in the 1950 contract?

A That's true.

[3680] Q And it's the same clause that was contained in the 1948 contract?

A Just carried forward to the 1950 contract and the '41 contract is amended.

Q Mr. Owens, have you or any of the other officers or the United Mine Workers ever had an agreement or understanding with any employer or any group of employers to set wages or bring about increases in wages or other employment standards at a level designed to eliminate any operator from the industry?

A No, sir, that is a vicious fallacy.

Q Has there been any changes in the wage policy of the United Mine Workers in the last 25 years?

A None at all, Counselor, I think the record will show, even back for 25 years, before that, beginning in

1941 in the wages of $7 a day, it is now $26.25, the basic rate. If you compile the total amount of wages increased added to the 1941 contract I think you will find that the weighted average of those 25 years is 80 cents a day or 10 cents an hours.

I think if you take the $16.25 in 1960 or '46 to 1966, when this contract expires, you will find that that $16.20 over those 20 years represents a weighted average increase of 80 cents a day or 10 cents an hour.

[3681] I think if you will take the $12.80 increase, I think it is, since 1950 to the expiration date of the present contract in 1966, a period of 16 years, you will find that the weighted average is 80 cents a day, 10 cents per hour.

I think if you will break it down to the last eight years that they are alleging, claiming that the last eight years there has been an increase in '58 of $2 and 1964 of $2, makes $4, and you will find if you divide that by 8 you have got 50 cents a year or 50 cents a day or six dollars and one-fourth cents.

Q You mean six and one-quarter cents per hour?

A Six and one-quarter cents per hour. And this fact is constantly being given consideration by the negotiators of this human element in this industry that we are servants of.

Q Excuse me. Did you state what was the increase from '41 to '50?

A I said from '41 to 1966 or from '46, 20 years to 1966, or 16 years from 1950 to 1966 and from 1958, the last eight years it has been less but, Counsel, with the permission of the Court, one of the problems involved in the negotiating of these wage structures is the purchasing power and the increased costs of living and the increased production of the men employed in the mines and the tremendous reduction in the number of men employed in the

[3682] mines, but above all that the International representatives, President Boyle and the vice president and the National Executive Board on the International policy are aware of this fact. The industry, I don't think, gives very much weight to it, that the wages in 1941 were $7 and were elongated to $8, which made it $8.50, which is the number of hours that prevails now. In 1941 they got $8.50, now they get $26.25, but this fact remains, that the take-home pay and purchasing power of that $26.25 after they pay 20 per cent in taxes, which is $5.20, and then they pay them off with 40-cent dollars, it's calculated of being the purchasing power of the dollar compared to 1940, out of the $21 left after 20 per cent taxes is paid you have got $8.40, 10 cents less than purchasing power than they had in 1941.

Q Mr. Owens——

A (Interposing) That doesn't prevail with the industry. They have money invested in stocks and the stocks go up and it increases in value and their surplus and the profits, they invest in new properties or new coal lands that lie idle without paying taxes on it and, of course, their corporate investments increase while the employee is paid by currency, by dollars that's substantially reduced in purchasing power, which reduces his ability to use and enjoy the things that he ought to.

[3683] All right. Now, were the increases in wages from 1950 on tailored to meet the abilities of the large coal operators' ability to pay?

A Why, Counselor, we don't represent the investment in the industry. It is a physical impossibility for the representatives of the United Mine Workers to even attempt to ascertain the ability of a certain corporation to pay a given wage over a period of time, say two years or a year, because those facts are not available to us. We are living under a free enterprise system. Our men

have a right to invest their money, they can invest it in coal land, like the United States Steel has over here that is being discussed about here, they can lease it out to Merritt, Chapman and Scott, and they can own the Marion Steam Shovel Corporation and they can build 120-yard shovels and then they can sue the United Mine Workers of America and they can bring into court a picture of the shovel that they manufactured in their own plant that they are suing us for, they have a right to do those things, we don't have any right to do them things.

Q Were the wage increases tailored to meet what the Mine Workers thought was the ability of the large operator to pay?

A We didn't take those questions under consideration. We try to negotiate the best contract possible for the men we have the honor to represent. We have more [3684] than we can do to look after the interests of the men who pay us and we leave the managerial—— the managing of the mine, the investment—capital can build any kind of tipple they want to, they can seek any kind of a mine in any seam of coal they want to, they can do it in Washington or they can do it in Alabama, they can build any kind of equipment, buy any kind of equipment they want to. This is free America, they have that right. We don't attempt to abridge that right any more than any other industry's employees try to abridge the right of the manufacturers to install any kind of manufactured machinery they want.

They did it in Great Britain, they brought about stagnation in the coal industry, they ruined her economy, they brought about nationalization of the coal mines and they almost lost their government when they were standing on billions of tons of coal because they followed a policy of trying to interfere, either directly or indirectly, in the direction of the working force and management of the mine

and what kind of equipment they installed on those mine

Q Is there any provision in the contract where th Mine Workers furnishes qualified workers to the emplo

A No. We have no hiring halls or tribunals set up like the building trades that the contractor calls dow and says he wants so many bricklayers and so many car penters. We have nothing like that. They have a righ to employ their men, they do hire them. We [3685] have nothing to do with it. The Seafarer Unio has hiring halls also.

* * *

[3690] Q Now, do you recall loans made by the United Mine Workers to the West Kentucky Coa Company over a period of time that total approximately $900,000?

A Yes. In 1961, I think it was, Counse [3691] I think the West Kentucky Coal Company was trying to refinance its loans that was standing with a group of banks and I think they lost a lawsuit, according to the press, that they were compelled to pay out some sums of money and they became in arrears of the Welfare and Retirement Fund and under the contract the United Mine Workers would have closed the mine do thrown those men out of work.

Q Were any representations made to them that tha was going to occur?

A Yes. When they became in arrears they were notified by the proper authority under the terms of the contract that they must meet that payment provided for by the contract and they couldn't do it. I think they had perhaps some trouble with their accounts receivable and anticipated payment for some investments perhaps, or some coal that they had marketed hadn't come in proper but let that be as it may, they became in arrears in the

Welfare and Retirement Fund and they came to us and asked us to lend them enough money to pay the Welfare Fund and keep it current until they were able to pay the money back.

Q Was that done in installments, do you recall?

A The amount Counselor, that they were unable to pay in the succeeding months, whether it was $160,000 or $200,000, we were to deposit that amount in
[3692] the bank to the West Kentucky's credit and they would issue a check on that amount to the Welfare and Retirement Fund until accumulated months amounted to $900,000.

Q Was that $900,000 repaid?

A Then in compliance with it they gave us a note on every ——

Q (Interposing) Was the money then subsequently repaid in total?

A It was paid back by the West Kentucky Coal Company, 200 and some thousand dollars and there was a balance when the stock was sold to the Island Creek Coal Company of 600 and some thousand dollars and the Island Creek Coal Company paid us the 600 and some thousand dollars and it was paid off in full in toto.

* * *

[3693] Q Let me ask you this, do you know whether
[3694] the Consolidation Coal Company belongs to BCOA?

A Yes.

Q How about the Peabody Coal Company?

A I don't think they do, only they belong to some association that is affiliated with the Bituminous Coal Operators Association, I think they still belong to the Ohio Coal Operators Association, but I am not sure about that.

Q How about the Island Creek Coal Company?

A I think they belong to the Southern Coal Producers Association, and, of course, they belong to those local associations, like West Kentucky now, Logan County, wherever they have mines located and they have these local associations covering geographical production in that locality, they belong to those associations.

Q How about the Pittston Coal Company?

A The same thing with that company.

Q How about Pittsburgh-Midway Coal Company, do you know if they belong to any association?

A I think they belong to the West Kentucky Coal Operators' Association, wherever their mines is located, in whatever state they have an association I think they belong to them.

Q Do you know if the West Kentucky Coal Company prior to the acquisition of that company by Island Creek, if it belonged to BCOA?

[3695] A Only as the—no, I think that they belong to the West Kentucky Coal Operators' Association but I don't think they belong to the Bituminous Coal Operators Association, I am not sure, I don't think they did.

Q Mr. Owens, did the United Mine Workers enter into any agreement or conspiracy to put any coal operator out of business with any other coal operator?

A This union has been led by characters like John Lewis, Tom Kennedy, William Green, Tony Boyle, Secretary Treasurer John Owens. I think any one of us would rather let a scorpion touch his cheek and trust not to sting than even to entertain such a thought of any conspiracy to put anybody out of business, coal miner or coal operator.

MR. OWENS: You may cross examine.

THE COURT: All right. Let's take a 10-minute recess.

(Thereupon, a recess was had.)

CROSS-EXAMINATION

BY MR. ROWNTREE:

Q Mr. Owens, in your testimony yesterday you discussed the situation after the Jacksonville scale was negotiated in the bituminous coal industry.

Would you state what happened after the Jacksonville scale?

A I did state it yesterday.

[3696] Q Yes.

A They worked under the contract and it expired on March 3, 1927.

Q Yesterday you went on to discuss what happened in the industry. Did not some disastrous results occur in the period of time after that wage conference?

MR. COMBS: I object to the form of that question. He can ask the effect of it. I think that counsel should be more specific on what he is actually talking about.

THE COURT: I believe this witness understands the question. He may formulate his answer; if not, he can so state.

A I don't know what you mean by "disastrous."

Q Well, I think you testified, did you not, that after that scale was negotiated many of the Southern companies left the union?

A No, I said in 1924 there was very few of them covered by the contract.

Q Well, when did this first occur, I mean when did the Southern companies start selling coal at cheaper prices and so forth that you were talking about yesterday?

A Well, Alabama, West Virginia, practically all of Virginia, weren't covered by the 1924 contract.

Q I will ask you, as a matter of fact, did you not testify yesterday that after the Jacksonville scale

[3697] was negotiated that the Southern companies started

pricing coal cheaper, the United Mine Workers suffered losses in their membership in the Southern fields?

A I didn't say there was any membership in the Southern fields.

Q Are you stating that the United Mine Workers d not have some disastrous results in that period of time?

MR. OWENS: I object. He is referring to the 1924 Jacksonville agreement, but '27 which Mr. Rowntree is referring to there, there was no agreement.

Q All right. What happened after the '24 agreem

A After the 1924 agreement expired, why, the Jacksonville agreement or the Jacksonville conference wa assembled and that's when I tried to explain to you.

Q I can't hear you.

A That's when I was trying to explain to you what happened.

Q Yes, sir.

A That during the existence of the 1924 contract that operators producing coal without an agreement in Virginia, Alabama, Tennessee, Kentucky, was marketin their coal into markets that operators that was under con tract with us at considerable less wages until they destro until they destroyed the opportunity to market [3698] their coal orderly in the markets where they had been marketing them under the terms of the con tract and in 1927 I said that the operators that was attem ing to negotiate contracts with us proposed that we negotiate a new contract with a clause in it that we would be continuously during the length of the contract—that the wages and working conditions would be whatever they were paying and working south of the Ohio River and I told you this contract, that that brought about the most disastrous condition that has ever existed in this coal producing section of America.

Q And after that there came on the NRA and the

government action?

A That lasted from 1927—one stage to the other, from one stage to the other until NRA days.

Q Was the NRA directed at minimum wages?

A The NRA set up rates of minimum wages in union and non-union coal producing areas.

Q Yes, sir. Then came on the Guffey Act, is that not right?

A The Guffey Act was enacted.

Q And what was that directed towards?

A Well, the Guffey Act was attempting to—nothing to do with the wages but was trying to set up some kind of a marketing policy that they thought could be set up and that would be beneficial to the industry and to the public and they had tribunal setup, joint tribunals, [3699] representative of labor and representative of the industry in almost every coal producing area designated by the Guffey Coal Act.

Q This was aimed at price control by legislation?

A Well, it wasn't exactly price control because I don't think it was ever put into effect as such. I was in President Roosevelt's office when he abolished the coal commission.

Q This came after demands of World War II for coal, is that right?

A Which, the Guffey Act?

Q The termination of the Guffey Act.

A World War II?

Q Yes.

A Well, this is in the—well, World War II didn't come on until 1941.

Q Well, the demand for coal arose before the war?

A Oh, the demand for coal, yes, the demand for coal started to increase.

Q So the Guffey Act really served no purpose in

that period of time?

A Well, I don't think it was given an opportunity to properly function. What they spent their most time in was trying to ascertain the quality of the coals so it could be recommended to consumer markets,

[3700] they were trying to ascertain how much sulphur, how much ash, how much the freight rates for given markets were, and they held conferences all over the United States where coal was being consumed, and they not only had distinguished men on the commission but they had the services of hundreds of other experts from the industry's side, from the government's side and from the labor's side and they never, after all of those hearings, they never was able to set up any correlating agency that was accepted as being a contribution to the industry, that was recognized as a contribution to the industry.

Q These provisions of the Act and these implementations of the Act were directed at marketing with respect to the various sections of the country in the industry, is that correct?

A That was their recommendation, if they could, they tried to.

Q Then during World War II there was a tremendous demand for coal, is that right, marketing was no longer a problem?

A No. Coal was sold for whatever a coal operator's conscience would permit him to ask for each ton of coal. That's how they became wealthy, a lot of them.

Q Did this not continue for a period of several years after the termination of hostilities?

A You mean the demand for coal?

[3701] Q Yes, sir.

A Well, it continued after the war was over

Q Would you say that by mid-1948 that the demand

was substantially slackening?

A I forget what the production was in 1948 but I think you are correct, it was.

Q In the meantime were you not having skirmishes with the major operators, between the major operators and the United Mine Workers over various questions, such as the trust fund, the welfare fund?

A We were arguing about activating the welfare fund, if that is what you mean.

Q Were you ——

A (Interposing) In compliance with the provisions of the contract.

Q Were you not also having skirmishes with the major operators about the effect of the new Taft-Hartley Act and the terminology of the contract?

A That's right, yes, sir.

Q Then when there came this slackening in demand for coal, did you not observe that the major mines of the country began to lose ground in their proportionate share of the market in competition with the small companies that had grown up during the war?

A Oh, I never noticed any difference than [3702] it was in the first World War.

Q There was considerable competition in the diminished demand by reason of small companies that had been founded and had grown up during the World War period, is that true?

A I don't understand what your question is, sir.

Q Had there not been a great increase in the number of companies, particularly smaller companies, in the World War II period in the bituminous coal industry?

A Counselor, I don't think that the Bureau of Labor Statistics' records shows that there has been very many casualties as far as the number of mines in the United States for a number of years.

Q I am not asking that question, Mr. Owens. I am asking you if during World War II there were not a number, a great number, of small coal companies that came into existence and were competing for the markets there in 1948 and then the demand was slackening?

A I think there was.

Q Now, is this not the situation that existed when Mr. Lewis warned the operators in 1948 that if they did not show leadership on the commercial side of the industry that the United Mine Workers would in the next few years, is that not the situation that existed at that time?

A What do you mean by "leadership"?

[3703] Q Well, we have in the record that speech. Do you not recall Mr. Lewis' words of warning to the operators in the 1948 convention about their lack of leadership and that if they did not assume leadership on the commercial side that the union would?

A You mean the union would show more leadership than then existed by the leadership of President Lewis?

Q On the commercial side of the industry.

A President Lewis never had any intention or idea about establishing any leadership on the coal operators' side of the table because we very humbly were constantly faced with their great leadership of the coal industry and it was rather embarrassing sometimes to Lewis and to Tom Kennedy and myself not being able to cope with the intelligence and leadership that the coal industry provided when they met us, but we existed under it, so we never — but we never attempted, we never attempted, publicly or otherwise, to have anything to do with the leadership of the coal industry, it's being led by some of the greatest corporation leaders there is in America, some of the most honorable men there is in any industry in America.

Q Do you not recall that Mr. Lewis gave this warning in the 1948 convention?

A Gave what warning?

Q That the union would assume the leadership on the commercial side if the operators would not

[3704] show leadership.

A You are taking out of context the assumption that he was talking about leadership of the coal industry and he is not paid for that, had no intention to do anything like that. All his life has been spent ——

Q (Interposing) I am asking, do you recall that speech?

A I don't know what speech you are referring to. I think I have listened to about every speech he ever made.

MR. COMBS: If counsel wants to ask the witness about a speech I suggest he be specific about it and tell him where the speech is and where it was made so that the witness may have the information.

Q Talking about in the 1948 convention, Mr. Owens, "May the Chair say this in relation to the general subject matter ——

MR. OWENS: (Interposing) What page are you on?

MR. ROWNTREE: This is Page 312 of the book, it's on Page 296-297, 1948.

Q "The productive capacity of our coal industry exceeds at any normal time the consuming capacity of our markets. For many long years the coal industry was developed to a degree that the work-time of industry was intermittent, and in the majority of coal-producing

[3705] states was almost chronically under 200 days per year work-time opportunities. A comparatively small number of special-purpose company mines, producing special-purpose coal, were able to work almost full time. Yet there were times when extraordinary conditions —world demand, wars and rumors of wars —— made more demand for the product, and we oftentimes found that an inadequate car supply prevailed and men in

specialized areas on special rates were deprived of a reasonable opportunity for work participation."

"The Mine Workers had a bitter experience in that matter and we have taken some profit from it. In the anthracite industry we made it an issue, and due solely to pressure from our organization and the policies which we suggested we were finally able in the anthracite region, covering Districts 1, 7 and 9, to put into effect a joint commission consisting of representatives of the operators, representatives of the three districts of the United Mine Workers, and representatives of the State of Pennsylvania, to allocate the work-time for the anthracite industry, so that such work-time as was available would be shared by all of our members in as substantially equitable a manner as could be made effective. This arrangement has proven to be a great stabilizing influence in the anthracite industry. Its maximum of efficiency has not yet been demonstrated because of the existence of a World War and the
[3706] fact that the industry has been taxed to supply more and more coal."

"I merely want to say this in connection with this matter. When this market condition comes to a point in the bituminous industry that it threatens the stability of our contract and the working conditions of our people, when the disparity of employment gets to a point where it constitutes a rank injustice and lack of opportunities for our members to work, the United Mine Workers of America itself may find it necessary to advise our members how many days a week they need to work. We have that contractual right, because the contracts are written to permit that. It is a matter of self-preservation for our mine workers; it is a matter of self-preservation for the investors in the industry. If the operators of this country can't give any leadership on the commercial side of this industry, the United Mine Workers of America can and will.

"So next year, in 1949 or at any other time, when evil days come upon this industry, you will find the United Mine Workers of America moving in, and if there are only three days work in this industry we will all have the three days work."

Do you recall that speech?

MR. COMBS: Now, may I ask counsel what the question was, did he recall that speech, is that the question?

MR. ROWNTREE: That is the question.

[3707] A I think I recall the address to the convention.

Q Now, the UMW did implement that in 1949, did it not, with the 3-day work week and the stoppage?

A No.

Q To obtain stabilization?

A No, nothing——that speech that John L. Lewis was making is to his constituents in the convention, stabilization was a world-wide subject matter. They were talking about stabilization in the peanut industry and the government was regulating it in agriculture, they were talking about stabilization in wheat and in cotton and tobacco.

Q Mr. Owens, I am asking you about the bituminous industry, which is referred to in this speech.

A He made that speech.

Q All right, sir. Now, in 1949, June the 15th, was there or not a stabilizing work stoppage in the bituminous coal industry?

A No.

Q I will ask you if you do not recall the editorial, Exhibit P137, the United Mine Workers Journal, that points out the stoppage at that time was for the purpose of protecting the human and property values inherent in the coal industry. "This means maintenance of stabilization as far as possible to equalize the equities of work opportunities

since the coal industry of its own accord cannot get together and exhibit the business acumen necessary
[3708] to protect its employees in the business and population of the mining communities. The duty of performing this public service evolves upon the only stabilizing force the industry has ever known, the UMW."

He talks about the necessity for "divide the order — share the work" program in the bituminous coal.

Do you recall that?

A The editorial, I expect I read it when it was published, but it has no bearing upon what we would do or would not do. That is an expression of the editor of the Mine Workers Journal. Some morning when he woke up and when he would write an editorial and publish it in the Mine Workers Journal, but that has no bearing upon what we would or would not do. We don't delegate that authority to a newspaper man employed by the United Mine Workers.

Q That's a completely independent newspaper. Is that right?

A It's not a so-called independent newspaper, but the editorial or the manager of the United Mine Workers Journal write a lot of things in there. It is not the expression of the executive officers of the United Mine Workers of America or the policy of the United Mine Workers of America. If they were given an opportunity to put it into effect —

[3709] Q (Interposing) Is it not the purpose of the United Mine Workers Journal to express the policy, the official policy of the International Union?

A Only when it is under the by-line of the executive officers of the Mine Workers and union and so noted that this is the expression as an executive officer of the International Union.

Q I will ask you if this is not the purpose of the

United Mine Workers Journal as expressed in the 1956 convention minutes in the part which gives the officers' report to the convention, "The United Mine Workers Journal, official publication of the United Mine Workers of America, has the primary function of being the direct link of communications between the union and the membership. As such the Journal makes every effort to report fully and faithfully all official UMWA activities by the International Union, the District and the Local Unions."

Isn't that the purpose?

A When they do that the purpose is fulfilled, but when they don't do that, why, then the communications in there is not official.

They might write about the Korean War or they might write about the conditions in some country in there.

Q But this article was talking about an act of the United Mine Workers and explaining that act, is [3710] that not true?

A Counselor, let me say to you that I know the editors of the United Mine Workers Journal and they don't possess the ability nor they don't possess the authority to interpret what the executive officers of the International Union means or does unless they are signed.

Q What is the purpose of the editorial page of the United Mine Workers Journal, the official publication of the union?

A Well, if the editor of the Mine Workers Journal write an editorial, he writes it.

Q Is he not employed?

A If I write it and sign my name to it, it's coming from me.

Q Is he not employed to carry out this purpose expressed here in the officers report as to the purpose of the United Mine Workers Journal?

A To the extent that it is official and only to that

extent, I think.

Q This was an official editorial, was it not?

A They have got, what did you call them, baking receipts in there?

Q Not on the editorial page, though, Mr. Owens.

A They got jokes in there, you can read it and you get some good jokes out of it.

[3711] Q Well, I am not trying to be funny here, Mr. Owens, I am talking about the editorial editor of the Journal.

A I am telling you that the editor of the United Mine Workers Journal does not express in the editorial pages what President Boyle says or what John Owens thinks about or about what John Owens does unless he is told and has done it under our instructions, if he does it otherwise it is just his opinion.

Q Well, the purposes of these work stoppages and the 3-day work weeks in that period of time was to carry on a stabilizing equalization of work opportunities, is that true?

A I repeatedly told you, no, no, no.

Q All right. I will ask you if you agree with this statement of Mr. Lewis——

MR. COMBS: (Interposing) I object to referring to these conclusions, whether he agrees or not. He can ask him whether he knows about it but I object to the question and he can't ask him whether he agrees with the statement or testimony of another witness.

THE COURT: I believe I will sustain the objection in that he is not an expert in the usual sense of an expert.

[3712] Q Was Mr. Lewis the primary officer of the union in the period of 1949 and '50, was he the chief executive officer?

A Mr. Lewis has been the president of the United Mine Workers since 1920 to 19——

Q (Interposing) I am talking about 1949 and 1950.

A I am giving you additional information that you might need.

Q I didn't ask for it.

A Yes, he was.

Q And would his expression with respect to the purpose of the 1949 and 1950 3-day work week be the expression of the chief executive officer of the union?

A What Mr. Lewis said he stands responsible for his own words.

Q Yes, sir.

A He doesn't stand—I don't accept his responsibility for what he says. I am the International secretary-treasurer. I am elected in my capacity as an officer of the organization to administer the organization's affairs, also I don't delegate that authority to anybody.

Q Now, Mr. Owens, in the 1949 bargaining sessions did not the United Mine Workers express concern for this lack of stability on the economical or commercial side of the industry and suggest that some stabilizing plan be adopted?

A No, sir.

[3713] Q Well, we have that in evidence, we won't go into that. Now, is it not true that on the operators' side the operators were concerned about the development that occurred back after the Jacksonville scale in 1924?

A They were concerned about the development.

Q In the industry and a repetition of those?

A You mean in 1949?

Q Yes, sir.

A I don't know as they expressed any concern about it.

Q I will ask you if you recall this statement of Mr. Love.

MR. COMBS: What page are you on, Counsel?

MR. ROWNTREE: This is 542.

Q "The picture for 1950 is beset with more competitive uncertainties than we have ever seen. Many operators feel the present stubborn demand by the union for improvements this year may be a parallel situation to the one which existed under the Jacksonville scale in the '20s, when a similar adamant attitude on the part of the union leaders practically destroyed both the union and the industry."

Do you recall that Mr. Love, as principal spokesman for the operators in the Northern Conference, was taking that position in these sessions?

MR. COMBS: I object to the form of the ques-
[3714] tion. The matter that counsel is asking about is not a statement of Mr. Love that Mr. Love made to the convention.

MR. ROWNTREE: I am not talking about the convention In the course of the negotiations.

THE COURT: Overrule the objection.

MR. COMBS: I object to it. Counsel is not stating the matter correctly. This statement was made in Pittsburgh and I think the witness has a right to know where it was made. It was not made at the negotiations.

MR. ROWNTREE: It was during the course of negotiations.

Q Was it not, Mr. Owens, you knew they were taking that position, do you not?

A I think that it would be safe for me to testify to a fact that the utterance made in Pittsburgh perhaps might have been copied out of some proceedings of a joint conference after 1898 because that has been their expressions in about every conference that they have ever participated in that the industry going to some place if we asked for any improvement in wages. That has always been their position Sunday, Monday, Tuesday, Wednesday, Thursday

Friday and twice on Sunday, so we just accept those statements.

The record, since you mentioned it, have you looked at the record of Mr. Love and Consolidation Coal Company since he made that statement and before that?

[3715] Has it been going like it was after the 1957 conference?

Q No, sir.

A It wasn't true, was it?

Q The major operators, the major mines, have greatly improved their share of the market since then, is that not true? Is that not true, Mr. Owens?

A What?

Q That the major companies, the largest mines in the country have improved their share in the market since 1950?

A I think that is true.

Q Now, isn't it true that back in 1949 and '50, Mr. Love and his colleagues, as spokesman for the Northern Operators, were concerned about the increasing share of non-union mines in the market?

MR. COMBS: I object to that question unless the witness knows what they were concerned about. I doubt whether he knows what they were concerned about.

THE COURT: Well.

Q Was this concern not expressed in the conference?

THE COURT: He may state his own answer.

A I think perhaps the concern of the non-signatory production in the conference was more expressed by the representatives of the Mine Workers Union because they, the operators, themselves, were responsible in

[3716] 90 or 80 per cent of their existence because they were aiding them, aiding in the marketing of their coal and keeping them alive and any apprehension about the influx of that tonnage was consequently being

expressed by us under this subterfuge clause and this protective wage clause and all of those clauses in the contracts, that's what brought them about.

Q Now, Mr. Love, I mean Mr. Owens, do you recall that Mr. Moses was concerned as to this Jacksonville scale result in 1920s during the period of negotiation in 1949 and '50?

MR. COMBS: Again I object to the form of the question unless the witness knows that he was concerned about it. He didn't ask him whether he stated his concern.

THE COURT: Allow the witness to answer if he knows the answer.

A I can't state that categorically whether Harry Moses, representing the great corporation of the United States Steel Corporation, one of the largest corporations in the world, was concerned about whether some non-signatory coal operator was producing coal or not. I know it didn't affect him any.

Q Now, in 1949 and 1950, Mr. Love and Mr. Moses were representing hundreds of small operators, were they not?

A Sir?

Q In the negotiations in the Northern Con-
[371] ference of 1949 and 1950, were not Mr. Love and Mr. Moses representing hundreds of small operators as well as large companies in those negotiations?

A They represented all of the members of the association represented in the conference. I wouldn't know how many of them.

Q And the Southern Coal Producers Association, Mr. Moody, had a great number of companies that were being represented in the Southern Conference, is that right?

A That's right.

Q Now, you had spoken about the turmoil and the

confusion and the publicity that was attendant upon this long conference and that was distasteful to the United Mine Workers, is that not true?

A I said not — not 1948, now, I said in the years gone by back before that it was distasteful to the United Mine Workers.

Q Yes.

A Some of our leading representatives really enjoyed it because it gave us an opportunity to spread our — disseminate our grievances that were in the industry and the low wages that it paid and the conditions that the men were living in these mine camps and we enjoyed the disseminating of the facts that existed that was being concealed by the coal industry.

[3718] Q Well, have you not —

A (Interposing) We enjoyed them.

Q Have you not testified that it was your desire to get away from the Roman mob scenes?

A Their desire, their desire, and eventually I state that it was for the best interest of the industry and for the best interest of the country, but you asked me if I enjoyed them.

Q And the policy of the United Mine Workers was to the best interest of that, too, is that right?

A Well, I think that the change in the policy has been a contribution to the best interest of the industry and the country.

Q You mean getting away from the publicity and all the spotlight?

A I think —

Q (Interposing) Don't you think that the public press has some part to play in the decisions that are made on these basic economic issues in a basic industry, like bituminous coal?

MR. COMBS: Object to the form of that question. I

don't know whether he thinks the press has a part to play in the decision in collective bargaining. I object to the form of that question.

THE COURT: Well, it is cross-examination. [3719] I will allow him to ask the question.

A Why, I have no objection to the expressions of the public press. You asked me whether they have any?

Q Part to play?

A Part to play?

Q A constructive part to play?

A A constructive part to play in the publications of what takes place in the conference?

Q In a conference that has to do with large broad economic effects.

A If the public press would report the proceedings of the conference factually, impartially, and would do that in such a way that both sides would be published, why, they might make some contribution, but our experience has been that only the side of the corporate interests — not criticizing the reporters, but that the corporate interests is espoused by them against the human element that is engaged in the controversy over a collective bargaining table. We have always received the small end of it.

Q Was this not a free press expressing free opinion?

A Oh, I think it is, you consider it a free press. I have no criticism of the press as such being free.

Q Well, is it not true?

A But you can't get me into an argument [3720] about who owns and operates the public presses in the United States and has for the last hundred years.

Q Is it not true, Mr. Owens, that in collective bargaining, as in any other democratic process, that the process thrives on controversy and —

A (Interposing) Sir, what did you say? Pardon me.

Q Is it not true that collective bargaining, as in any other democratic process, that that process thrives on the ability of everyone to express his best on the turmoil and the confusion that results from all sides being heard, is that not right?

A Well, sometimes it is a detriment to them.

Q Beg your pardon?

A No.

Q That is not true?

A Sometimes it is a detriment.

Q Do you think that the democracy thrives on taking the important negotiations ——

A (Interposing) I didn't say democracy.

Q Outside of the public spotlight and putting it behind closed doors, is that the attitude?

MR. COMBS: I object to this line of questioning.

THE COURT: Yes, we are getting rather [3721] far away from the issues of the lawsuit.

Q Now, Mr. Owens, after you came to terms with Mr. Love and Mr. Moses in 1950, you did handle the subsequent negotiations on the later Bituminous Coal Wage Agreement Amendments with these 2-man bargaining teams, is that not right?

A Oh, not 2-men bargaining teams, no. In the 1950 conference, if you want me to give you a list of the representatives of the coal operators and a list of the representatives of the miners I can do it. Harvey Cartwright from Indiana, when you mentioned George Love and Harry Moses for 1950, Harvey Cartwright was president of the Joint Conference, elected. Tom Kennedy was the secretary, George Love was in the conference, Harry Moses was in the conference, another representative of the operators was in there, I just don't recall their names.

Q Are you talking about the '49 and '50 conference?

A You asked me about the '50.

Q I was talking about after the signing of the 1950 contract. Do you recall exactly how the 1951 contract was negotiated, the mechanics of it, and I will ask you this, Mr. Owens ——

MR. COMBS: (Interposing) Ask him one question at a time, please.

MR. ROWNTREE: All right.

[3722] Q In reading from Page 150 of the 1952 minutes, "Mr. Lewis had many conferences with Mr. Harry M. Moses, who represented the industry. Finally in Mr. Lewis' handwriting the suggestions below were given to Mr. Moses, who made a copy of them and handed the copy to Mr. Lewis, retaining those in Mr. Lewis' handwriting. These suggestions resulted in the consummation of the National Bituminous Coal Wage Agreement of 1950, as amended January 18, 1951."

Do you recall that?

A Yes, I do.

Q Now, isn't it true that that was done six months before the expiration of the contract?

A I don't recall it was six months, no, not six months, I know it wasn't.

Q Well, this was done in January, was it not?

A Well, I don't just recall the time but I remember the incident and I remember the paper.

Q Wasn't the contract not supposed to expire on its terms until June?

A Well, they were meeting trying to consummate a new agreement.

Q And this was a new technique in bargaining, wasn't it?

A No, nothing new about it at all, other than these open meetings that I am telling you about. For your benefit, you are leaving the impression that John Lewis

[3723] and Harry Moses was there and he handed him a paper.

Well, the fact of the case is I was there and Tom Kennedy was there and John Lewis, when we arrived at them figures and Harry Moses gave the thing to his associates——

Q (Interposing) You recall that Mr. Kennedy, Vice President Thomas Kennedy, in 1956, in the 1956 convention pointed out this new technique in the industry?

A Yes.

Q You remember that?

A I remember Tom's expression in the conference, that is again addressing the International Convention of the United Mine Workers of America and conveying to them the splendid way, his contribution or President Lewis' contribution made whatever success that had been accomplished in the negotiation of the wage contracts. That was an expression of the administrating officer of an International Union to his constituents, called and reported to in conformity with their International Constitution.

Q What has happened to the right of the small coal operator in the Southeastern Tennessee field to participate in what the terms of this national contract is going to be, Mr. Owens, under this new technique?

A You asked me that, I am telling you that Mr. Stanlee Hampton, who I am sorry is physically
[3724] unable to be here so that I can see him, represented this Tennessee section in all these conferences when he was able to be there and Lee Gunter, another distinguished Tennessean, represented them in the conference for a number of years and if the Tennessee Coal Operators Association wanted to participate in a wage conference with the Southern Coal Producers Association all they have to do is join it and attend it, we don't care.

Q How is he going——

A (Interposing) If the other operators will agree

to meet with them we will agree to meet with them in a national conference.

Q How is he going to crash into a 2-man bargaining team?

A How are we going to drag you in on a 2-man conference? How can we drag you in? We got to meet the men that will be there, who agree to meet us day and date. We can't come down here and get the coal operators that lease coal from the United Steel Company up there or from Tennessee Products or Consolidated tonnage to come to a joint conference. We can't come down here in a wheelbarrow and wheel them up there.

Q Now, you say that you conduct these negotiations with the Bituminous Coal Operators Association because they represent the predominant tonnage?

[3725] A Yes.

Q Now, Mr. Stanlee Hampton, and nobody else in the Southeast Tennessee field, represented any preponderance of the tonnage, did they?

A No, they don't.

Q Wasn't it your desire to talk with the people representing the predominant tonnage, is that the way you negotiated these contracts?

A No, we will be very glad to meet, we will be very glad to meet any coal operator if he just produces a half a—if he produces 400,000 tons or a 100,000 tons, if he wants a time and place to meet us.

Q But he won't be given the recognition that Mr. Moses was given or Mr. Fox, is that right?

A We have the reputation of at least being gentlemen and we will give any coal operator all of the attention.

Q But the deal——

A (Interposing) Stand and listen to him and present any argument, real or imagined, that he has on his mind at any conference that he wants us to participate in.

Q But the deal had to be made with Mr. Moses or Mr. Fox?

A No, there was no such thing as any deal.

Q Well.

[3726] A It was negotiated. You used that word "deal" and, please, I don't make any deals, with you or anybody else.

Q Wasn't each one of these National Bituminous Coal Wage amendments a deal, an agreement?

A No deal. Now, in the—as you refer to a deal, they are amendments to the contract, but no deal.

Q Do you——

A (Interposing) You are implying that there was something——

Q (Interposing) I am trying to put agreement and deal in the same category.

A Yes, but I participated in it and I don't want it to be referred to as participating in a deal, it might be a dirty deal that you are referring to, clean it up.

Q Well, nobody—but you had to reach the agreement with Mr. Moses?

A That's perfectly all right, say "agreement" not "deal."

Q All right, sir. You had to reach the agreement with Mr. Moses and Mr. Fox?

A We did agree.

* * *

[3727] Q Mr. Owens, I believe that you testified that this "most favored nation" clause expired with the 1950 contract, is that right?

A I think practically the same clause was in the 1948 contract but we struck it out in the 1950 contract.

Q That clause was not expressly stricken, though, was it?

A Well, it speaks for itself, the language is null and void.

Q Well, were not the operators justified in contending that that clause was still in effect?

[3728] A No, sir, they all know it wasn't.

Q Did they make some contentions along the line that it was still in effect?

A Not any coal operators that I know of of any consequence believed that it was in the contract because it was taken out of the agreement in the negotiations, both North and South.

Q They were contending that it was still in effect were they not?

A No, sir.

Q Did you not testify that operators were contending that that clause was still in effect after 1950?

A I said that I have heard that certain segments believed it was still in the contract and I want to clear it up for the record.

Q But that's not what you testified on direct examination, though, was it, Mr. Owens?

MR. OWENS: Your Honor, we object to that as a misstatement of what he testified to.

THE COURT: You may answer.

A What I testified to was the language of the contract.

Q Is it not true that you testified that operators were contending that the "most favored nation" clause was still in effect after 1950?

[3729] A Not that I recall.

Q But you did hear that some of them were complaining that the "most favored nation" clause was in effect after 1950?

A I think the expression of that belief that led me to that conclusion came from you.

Q Well, we will have to let the record speak for

itself on that. Was that a matter of concern between the union and the operators after 1950 as to whether or not the "most favored nation" clause was still in effect?

A No, I think it became a moot question.

Q And why was it moot then?

A Because it was stricken from the contract and never was raised, to my knowledge, of any consequence.

Q And the union did not have any other contract besides the National Bituminous Coal Wage Agreement?

A No, sir.

Q And, therefore, there was no other contract to consider as to whether or not there was a lesser wage to determine the applicability of the "most favored nation" clause?

A Well, you asked me about what was in existence. I am responsive to your inquiry, that it is our belief, it is the contract that the so-called "favored nation" clause was inserted in the 1941 contract, was deleted [3730] in 1948 and deleted again in 1950 and has never been a subject matter of discussion in any joint conference with any consequence that I know of.

Q But outside of the conferences was there any discussion about it between you and the operators?

A I don't recall. I think that I have heard coal operators make the statement that they wouldn't enter into any—we couldn't enter into any other agreement than that which is provided for in the National Bituminous Wage contract, regardless of the "favored nation" clause in the contract, they thought. That isn't true.

Q Were they talking about practices of the United Mine Workers that they were complaining about in making any lesser contracts with some other operators?

A Well, they were just complaining about their belief of what the contract or what our belief of the contract was and we tried to tell them that that wasn't in it,

we would meet them any time.

Q Well, isn't it true that you did get into some wrangles with the operators that had signed the national contract complaining about "sweetheart" deals?

A The word "sweetheart" is a word that I don't know whether they—I don't know why they don't call it "Kiss me Kate" instead of "sweetheart", but they call it "sweetheart" and I don't just understand what you mean by it other than Senator McClellan's committee has investigated some labor unions that it was alleged that they entered into some "sweetheart agreement with some segment of the corporate interest that was paying labor but that is not the United Mine Workers of America and we don't do it and I think that is where the word "sweetheart" was first mentioned, as far as I know, but that doesn't prevail among us, as you know, Congressman, or Counselor.

[3731]

Q Well, I have to say that I don't know that, Mr. Owens.

A You don't have to testify to it.

Q Is it not true that it is very prevalent in the Appalachians?

A No, not anywhere.

Q Is it not true that it is very prevalent in Mr. Carson Hibbitt's district, District 28?

A No.

Q Isn't it true that it is going on in large numbers of instances in the western field of Virginia?

A No coal operators signatory to the agreement or no coal operator that has a contract that has been approved by the International Union carries any segment of any inference that it was made under a "sweetheart" condition that you say.

Q Isn't it true that it was very prevalent in the Southeastern Tennessee field before the enforcement of

[3732] the national contract in this field?

A No.

Q Now, Mr. Owens, after the 1950 contract and the successive amendment to that contract, by the middle '50s and the late '50s quite a number of the units of production passed out of existence, is that not true?

A Well, I think I expressed my judgment that it was approximately about the same number of mines reported by the Federal Bureau of Mines in their 1960 report, that there was in the 1950 report, I wouldn't be positive about that, but I think it ran over 700——7,000.

Q Do you not recall that?

A Maybe more in 1964 than there was in 1950.

Q Do you not recall that there was great numbers of the Class 3 and 4, Class 2, 3 and 4 railroad tipple mines that passed out of existence in the Appalachians?

MR. COMBS: I object to the question. There is no evidence on what Class 3, 4 and all of that in this record applies to, a mine of that size, and let's make it clear in the record as to what he is talking about.

Q Do you know the categories of mines established by the Bureau of Mines with respect to size?

A You mean those that produce a million tons or produce between 500 and a million?

[3733] Q Yes.

A Yes, I am familiar with that.

Q And is it not true that the old railroad tipple mines of the Applachians, most of them were in the categories of Classes 2 through 4?

A Well, if you are speaking about the production from mines that prevailed all over the United States, it was a rare thing, Counselor, I think—I worked in a coal mine that produced more coal than any other coal mine in the State of Ohio and I think its maximum employment was 400 and some men, and, of course, there has been a

change in the number of mines, they have been built or sunk so that they can recover acreages for miles away from the tipple but in them days the transportation was limited.

Now they are going from their property line eight and ten miles away from the tipple, they are installing railroad equipment in the mines. I read the other day where they were contemplating putting cars underground with a capacity of 250,000—or 250 tons. Well, that is railroad equipment, with railroad equipment to transport. Well, that, of course, has a bearing upon the number of mines there is in existence.

Q Mr. Owens, hasn't the number of railroad tipple mines declined in the Appalachians in the last ten years?

A Well, I think there has been.

[3734] Q Hasn't there been a great increase in the number of small truck mines in the Appalachia

A Well, I think that there may be more mines, truck mines, that is on account of transportation.

Q And most of these truck mines are operating in the thin seams of the Appalachians?

A Oh, not necessarily.

Q Now, isn't this where the "sweethearting" is going on under the United Mine Workers contract?

A I am trying to tell you, Counselorman, that we have not entered into any "sweetheart" with any coal producer in this country in existence or in any other time.

Q Are you talking about your district officers and your field representatives?

A I am talking about the administrative officers of the United Mine Workers of America that makes it a legal contract and that's the executive officers and the policy committee.

Q Do you recognize——

A (Interposing) Any other contract is not a legal

contract.

Q Do you recognize that there are quite a large number of contracts, which you term as "illegal", existing with the full understanding of your field representatives in the Appalachians?

[3735] A I don't think there's any contract anywhere with the full knowledge of an accredited representative of the Mine Workers Union that has a taint of "sweetheart" with it, if it did I would fire him, have him fired.

* * *

[3753] BY MR. ROWNTREE:

Q I wanted to ask, Mr. Owens, what percentage of the industry does the United Mine Workers represent today, can you give us some figures on that?

A I think about approximately 77 per cent of the production is under contract. I think over a period of ten years it averages about 77.4, it fluctuates, sometimes at 79.

[3754] Q Could you give us some——

MR. COMBS: (Interposing) Pardon me, Counsel, I take it what you are talking about now is the percentage of the employees of the industry?

MR. ROWNTREE: I think he said 70 some-odd per cent of the production.

MR. COMBS: All right. I just wanted to know what it was.

Q Can you give us some idea of the percentage of the number of working employees?

A I think the employees runs approximately between 77 and 80 per cent.

Q Can you give us some idea of the percentage of the number of employees in 1955 or in that period of time?

A I think it runs, Counselor, I think I tried to con-

vey to you that over a period of time that it runs, production runs about 77.4, goes up and it comes down.

Now, on the number of men, of course, the increasing of the production from larger units, mechanization of the industry, why, there has been considerable less men employed in the industry in the last 10 or 20 years, every year we lose in the industry as far as the men is concerne

Q How many men are employed in the industry toda

A Today I'd say approximately 130,000, 134,000.

* * *

[Printer's Space]

[3756] MR. COMBS: If the Court please, pursuant to stipulation of the parties, we are reading the direct examination of Mr. John L. Lewis in the case of United Mine Workers of America against James M. Pennington, et al. His testimony was given in April, I believe, of 1961.

JOHN L. LEWIS

DIRECT EXAMINATION

(Mr. Combs read the questions and Mr. Rayson the answers.)

"Q This is Mr. John L. Lewis, I believe?

"A Yes.

"Q May I ask how old you are, Mr. Lewis?

"A Born 1880.

"Q You have for quite some years until quite recently been president of the United Mine Workers of America, I believe?

[3757] "A Yes.

"Q And you are now president emeritus of that organization?

"A Correct; yes, sir.

"Q When did you step out of the presidency and become president emeritus of that organization?

"A January, 1960.

"Q What was your first connection with the United Mine Workers of America?

"A As a member and an officer of local unions; as legal representative of district; delegate to conventions; organizational work; statistician for the International Union; manager or business manager of the United Mine Workers Journal, which at that time was on a circulation

and advertising basis; later vice president; later acting president; president in 1920 until 1960 inclusive.

"Q Do you recall what year you first joined the United Mine Workers of America and became a member?

"A I do not right now, sir, but—

"Q Where were you living at that time; where was your home?

"A In Iowa where I was born.

"Q Your residence at the present time is where, Mr. Lewis?

"A Legal residence is Springfield, Illinois, [3758] temporary residence, Alexandria, Virginia.

"Q Where are the present headquarters of the United Mine Workers?

"A In Washington, D. C., since about 1935 or '36.

"Q Prior to 1935 or '36 and after you became president in 1920, where were their headquarters?

"A Indianapolis, Indiana, established there in the early days of the organization because it was a centrally located place geographically, and remained there until moved to Washington.

"Q In what areas of the United States, principal ones, are the bituminous coal mines of this country located?

"A What we call the entire Appalachian area of the industry running from Pennsylvania on the north to the Warrier River field of Alabama, and extending crosswise of the country in a northwesterly direction direction to the State of Washington and south to the State of New Mexico. A few small lignite deposits in the State of Texas. Still a few small deposits in California, but there are broken strata and pockets of coal and it is greatly bothered with sulfuric acid water and hardly profitable to operate.

"In Oregon there is a small deposit at Coos Bay, in that area, and the Cascade Mountains of Washington and right through towards Seattle there are vast areas of coal which have not been developed to any substantial
[3759] proportions.

"Q And there are some substantial coal deposits, or fairly substantial, in the bituminous field in Tennessee, Eastern and Middle Tennessee, and in parts of Kentucky?

"A Quite so. In West Virginia and Pennsylvania, and so forth. In this so-called Appalachian area.

"Q Mr. Lewis, I have here a book, copy of which has already been filed in this record as an exhibit from interrogatories, the Constitution of the International Union and United Mine Workers of America, is that correct?

"A I verify it."

MR. COMBS: This is an exhibit here, I don't recall the number but it was an exhibit to Albert Pass' deposition, the exhibit we are talking about.

"Will you read the preamble to that, Mr. Lewis?"

MR. RAYSON: "'There is no truth more obvious than that without coal there could not have been such marvelous social and industrial progress as marks present day civilization.

"'Believing that those whose lot it is to toil within the earth's recesses surrounded by peculiar dangers and deprived of sunlight and pure air, producing the commodity which makes possible the world's progress, are entitled to protection and an equitable share of the fruits of their labor, we have formed the United Mine Workers of America for the purpose of establishing, by
[3760] lawful means, the principles embraced in the body of this Constitution.'"

* * *

MR. RAYSON: "'Article I. Name. This organization shall be known as the United Mine Workers of America It shall be international in scope, and as an organization shall not be committed to or favor any particular religious creed; neither shall affiliation herewith interfere with the religious or political freedom of individual members.

"'Article II. Objects. First. To unite in one organization, regardless of creed, color or nationality, all workers eligible for membership, employed in and around coal mines, coal washeries, coal processing plants, coke ovens, and in such other industries as may be designated and approved by the International Executive Board, on the American continent.

"'Second. To increase the wages, and improve the conditions of employment of our members by
[3761] legislation, conciliation, joint agreements or strikes.

"'Third. To demand that not more than six hours from bank to bank in each 24 hours and not more than five days per week shall be worked by members of our organization.

"'Fourth. To strive for a minimum wage scale for all members of our union.

"'Fifth. To provide for the education of our children by lawfully prohibiting their employment until they have at least reached 18 years of age.

"'Sixth. To secure equitable statutory old-age pensions, workmen's compensation and unemployment insurance laws. To provide for security against old age and disability of members and their dependents.

"'Seventh. To enforce existing just laws and to secure the repeal of those which are unjust.

"'Eighth. To secure by legislative enactment, laws protecting the limbs, lives and health of our members;

establishing our right to organize; prohibiting the use of deception to secure strikebreakers; preventing the employment of privately armed guards during labor disputes; and such other legislation as will be beneficial to the members of our craft.'"

* * *

[3762] "Q Mr. Lewis, you have heard me read the objectives set forth in Article II of this constitution. Since you have been president of this organization, or while you were president of it, did you attempt to carry out those objectives?

[3763] "A At all times and under all conditions, subject, however, to such modifications as conditions imposed upon the industry and upon the bargaining processes thereof and the limitation of the United Mine Workers as an organization of—a voluntary organization of human beings.

"Q In carrying out of the objectives of the organization as set forth and as I have read them, have there been negotiations for collective bargaining agreements between the owners and operators of mines on the one part and representatives of the United Mine Workers of America on the other?

"A Oh, yes. Practically since the beginning, the foundation of the organization in 1890, and continuing up to this time. The bargaining, the mechanics of the bargaining and the geographic areas representing the bargaining conferences by representation from management and the union have varied at times by re-arrangement, by shifting volume of production, economic conditions and so forth.

"Q Have there been shifting volumes of production from different areas of the United States to other areas so that some that once produced larger quantities now

produce smaller, or at least percentagewise?

"A There has been a great shifting of volume of production in the various areas.

"Q In the early days of the industry, or back at the time when you first became officially connected

[3764] with it, what was the largest production area in the bituminous coal fields?

"A The largest production area at that time was what came to be known as the central competitive field in the mining industry.

"Q Would you explain it a little, please?

"A It embraced four states, Illinois, Indiana, Ohio and Western Pennsylvania, which at that time were the main producing districts for commercial coal, and produced about two-thirds of the annual production of the nation. The effort was made to arrive at a base in the central competitive field, which became the guide line of the various outlying districts as they were called. Some production in West Virginia, some in Kentucky, a little in Maryland, some in Eastern Pennsylvania that was not embraced in the central competitive field, Iowa, Wyoming, New Mexico, Kansas, Missouri, Arkansas, they were outlying districts producing about one-third of the total volume annually mines; but from every standpoint of stability they did not wield the influence in the industry that the central competitive field did.

"Q Collective bargaining agreements at that time - in those earlier days were entered into usually first, I take it, by the United Mine Workers of America and the operators in those districts, in that central district, that central field?

[3765] "A That is right.

"Q And then were agreements also entered into between the operators and the outlying fields and the

United Mine Workers of America?

"A Yes, premised upon the central competitive field settlement, insofar as was deemed proper by the parties of the conference.

"Q During these negotiations for those contracts, then in continuing on down to the later years, what has been the objective of the United Mine Workers in the conferences?

"A In which conferences?

"Q In the conferences that were held to determine a contract, what objective was the United Mine Workers putting forward in all these conferences and meetings, negotiations?

"A Consistent with the declared objectives of the union, which were written substantially as they read now in the constitution, by the founders of this organization about 70 years ago, and modified at times by existing economic conditions, the inability of the union to accomplish those objectives in the face of the opposition which it encountered, the limited means of the Mine Workers, the men who worked in the mine, and all of the other circumstances attendant upon those conditions. Invariably they were the objectives.

"Q Was it at any time during the period [3766] that you have had official connection with the United Mine Workers of America the objective of the United Mine Workers to put out of business any coal operator?

"A Never at any time. To the contrary, the union was dedicated to the proposition of encouraging those men to become members of the union and join with their fellows throughout the national industry in improving their common lot, raising their standards of living, increasing their compensation, providing for better working con-

ditions, less hazardous, and providing—seeking to establish a basis of living, to add to their material well-being and enable them to provide for the evil years that faced them all in the end.

"Q What, if anything, does the union have and has it had during the years to do with the picking of the negotiating parties who represented the industry or the operators? In other words, who has chosen the operators that appeared, who has chosen the negotiators who appeared on behalf of the operators?

"A The various coal operators associations. There are national associations and there are local associations, of which there are a substantial number. Operators in their given area, county perhaps, or in a given area where working conditions and mining problems are somewhat similar, they form a local association which
[3767] conducts the local negotiations during the pendency of a contract, on interpretation of the contract, and affecting the grievances of the men under that contract during its life.

"Q I take it those coal operators associations have varied in size from a small number of operators in a particular association to larger numbers in other associations?

"A Quite true, sir. The original representation in the central competitive field in 1898, when the first central field contract was negotiated, there were eight operators and eight representatives of the Mine Workers from each of the four states. The operators likewise were represented by eight men from each state making the negotiating conference have a membership of 64 individuals.

"In order to function in parliamentary fashion, special committees were created that studied and made reports

on specialized subjects. They were called sub-committees. The sub-committees varied in size from two or three on each side down to one man on each side, and during the years that came, that membership was slightly decreased, became a more normal representation.

"At times, all of the miners and operators met in what is so-called joint conventions, too large to be really constructive, but offering a platform for the principal figures on both sides to publicly enunciate their viewpoints in defense of their respective positions, and

[3768] during the years, it's been changed at various times in various ways.

"Quite frequently at all times during the years that Mr. John Mitchell was president of the organization, oft times he and the leading operator in the central competitive field, having the confidence of his associates, would go off on a 2-man committee to see whether they could work out a program to recommend in proper sequence to the negotiating committee, to recommend to their respective memberships.

"Every resource to arrive at a common understanding was utilized from time to time during those years.

"Q How were the representatives of the union, men who negotiated for the union, selected? In what manner were they chosen? How were the unions or the men in the unions kept advised of what was going on in these negotiations over the years?

"A Under the authority of a constitutional convention of the United Mine Workers, held from time to time, a policy committee was created to deal with wage negotiations between conventions, and a designated number of representatives served on the policy committee from each of the several districts of the United Mine Workers of America.

"That was really the negotiating conference. The membership of that committee varied from time to time and its membership ranged at different times
[3769] from 100 to 120 individuals to as high as 200 individuals at times, all with equal representation proportionately from each of the several districts of the union.

"They would appoint or select a scale committee, the actual number of representatives that would meet in joint conference with the operators' representatives. This scale committee would report back to the policy committee its progress or its nonprogress from time to time.

"The policy committee had a warrant from the constitutional convention giving it full jurisdiction between conventions as the responsible organization to decide those things, all things pertinent, between the convention

"Q There have been consummated, of course, between those various operator groups and the United Mine Workers of America over this period since you have been president many different contracts, have there not?

"A Quite so.

"Q The basic agreement in effect at the present time I believe we know in this record as the 1950 agreement, as you are aware?

"A Yes.

"Q But there have been certain amendments to it since it became effective in March, 1950?

"A The 1950 agreement as modified from time to time.

"Q As modified, yes.

[3770] "A As amended, rather.

"Q What was the agreement known as, the one that was just prior to the 1950 agreement?

"A Oh, it was the agreement known from time to

time as the current agreement between certain dates, known by the agreement of certain dates.

"Q Well, the one I am referring to is the 1948 agreement which you recall. Now, I believe the 1948 agreement had a provision with reference to cancellation, that either party—do you recall whether the operators gave notice to the union of cancellation of the 1948 agreement?

"A Are you referring to the cancellation by the Southern Coal Operators Association that year? I think that was the year.

"Q Yes, sir.

"A Yes, I recall that.

"Q Had the United Mine Workers given any notice of cancellation?

"A No.

"Q After the Southern—well, before I get to that, what area comprised what you refer to as the Southern Operators Association, in general terms?

"A That was the group of operators who called themselves representatives of the Southern mining companies.

"Q I take it it included—

[3771] "A Embraced tonnages in Southern West Virginia, Virginia, Kentucky, Tennessee, Southern Appalachian contract, and I think the commercial operators of Alabama.

"Q That contract, and I am referring now to the 1948 contract, had the clause in it that it could be canceled after a given time by either party after 60 days notice.

"A That is right.

"Q And the Southern Operators gave notice of that cancellation?

"A Yes, they did.

"Q I believe that was in the early part of the year, 1959, probably February, or about that time, is that about right?

"A That is right.

"Q February, 1949. What followed after notice was given? I say 'followed', I mean as far as negotiations are concerned or dealings with reference to a contract."

MR. COMBS: And then this is Mr. Kramer talking, your Honor, he says, "Somebody tells me I am wrong, Mr. Lewis, that that was April rather than February or March. I thought I had a note here, but I can't find it. Anyway, it was in the early of '49, after having given that notice, what occurred?

"A For the time being, nothing occurred. The Southern Operators had expected that the United
[3772] Mine Workers, when in receipt of this 60-day notice of termination, would likewise issue a 60-day notice against the Northern Operators which was the preponderance of the tonnage of the country.

"The United Mine Workers did not give such a notice.

"Then it became apparent that a unique situation was developing, that the Southern Operators would sever their contractual relations with the United Mine Workers on a given date, 60 days from the date of their notice, and presumptively it wouldn't operate their mines. But it became increasingly aware of the menace to their established business if Northern Operators kept on working.

"Later, it resulted in a joint conference being held in Bluefield, West Virginia, with the Southern Coal Producers Association or representatives, and a conference with the Southern Coal Operators Association at White Sulphur, West Virginia. Some of the representatives

of the United Mine Workers attended the Bluefield conference, and some the White Sulphur conference.

"It was not the desire of the Mine Workers to in any way disturb the equilibrium of the company at that time. They would not have given any notice, but in the end we were compelled to give notice to the Northern Operators and assemble this conference in order to prevent too wide a gap between the two contract expirations which had been rather disastrous for the commercial [3773] interest in the industry.

"Q So that following those meetings, you did, the United Mine Workers did give notice of cancellation of the contract, collective bargaining agreement that was in effect with the Northern Operators?

"A Yes.

"Q After those two contracts were terminated by these notices, were negotiations entered into with reference to the entering into a new agreement?

"A Did such negotiations ensue, you mean?

"Q Yes.

"A Yes.

"Q Did those negotiations continue over a long period of time?

"A They did.

"Q In other words, there were substantial differences in opinion between the owners and operators of the mines and the union as to the proper terms to be written into that contract?

"A Yes.

"Q Were there not?

"A Yes, sir.

"Q During the period when these negotiations were carried on, being carried on, did the mines operate on a partial basis and the union members functioned during

[3774] part of that period, and, if so, on what basis? I am referring to the 3-day work week, Mr. Lewis. And explain, please.

"A The so-called 3-day work week came about in this manner. At the time the work in the mines was suspended the United Mine Workers knew that every need of the country was being met because we had an exact number of the amount of storage of coal above ground and where it was located, and so forth, and we knew that there was no emergency. But the newspapers of the country and the public press and some of our public officers, began to bring that out as a contingency facing the nation—that the nation was going to be short of coal by reason of the controversy between these conflicting interests. They wanted the government authoritatively to request the mine workers to work pending negotiations.

"The Mine Workers knew that there would never be any termination of the negotiations as long as the mine workers worked pending negotiations, but in order to abate the public concern as to a possible shortage of coal in new quarters the mine workers agreed to return to work pending negotiations, conclusion of negotiations, subject, however, to this qualification: That a 3-day work week would assure the country an ample supply of coal for all public services and every personal individual requirement. So that we offered to work three days a week and accept the work pending arrangement and instructed our membership to do likewise.

[3775] "Well, the operators attempted to believe that we were asking, trying to impose a 3-day work week on the industry in perpetuity, which, of course, was not true, and a great clamor went up about the Mine Workers' position on the 3-day work week.

"We were roundly criticized in some quarters, mostly by interests who failed to comprehend the strategy that was involved in such—the protection of the public interest and at the same time penalize the operator for not working the remaining days of the week if they were able to work the remaining days of the week.

"As a matter of fact, sir, if the United Mine Workers were offered a 3-day work week voluntarily by the operating interests of this country, we would become compelled to refuse it, then and now, because it would be too restrictive on the income of the members of the United Mine Workers of America and be by far from equitable to require a man to live in the tenements of a coal mine with the opportunity of working three days a week and remaining idle four days of the week. Perfectly absurd from an economic standpoint, from a personal and humane standpoint. The operators well knew that, but they were perfectly willing for the public to believe that our motives were ulterior and sinister. They were not.

"It was merely a small piece of strategy de-
[3776] signed at the moment to create a little discomfiture in the operators' ranks while they were disinclined to make an agreement and abate the controversy.

"Q In other words, it was used during the period of negotiations as a strategic move but at no time did the United Mine Workers ever demand the inclusion in a contract of a 3-day work week; is that correct?

"A That is right on the 3-day work week. There have been demands and requests in time gone by for the 5-day work week in accord with the trend of the industry and requirements of the country but nothing further than that.

"Q I want to ask you particularly this question because of the assertion made in the present lawsuit, Mr.

Lewis. Did the United Mine Workers, as one of the requests to be included in the 1950 agreement, demand that the operators enter into a 3-day work week?

"A The United Mine Workers of America did not make any such statement or demand, and the United Mine Workers of America today if offered a 3-day work week would have to decline its acceptance out of hand.

"Q Now, Mr. Lewis, I want to talk a minute about wages as the United Mine Workers have stood for wages of these people who are employed in the coal mines. What has been the policy continuously of the United Mine Workers from your years connected with it officially down to the present time on the wage structure?

[3777]

"Maybe I ought to start out, do you recall what the wage increase was that was negotiated in the 1950 contract when it was finally negotiated?

"A All of the gains made during the 1940 to '50 period were consolidated in the 1950 agreement, written in.

"The government, on several occasions between 1940 and 1950, seized the mines by executive order of the President and operated upon the account of the government and would call upon the mine workers to work for the government during the pendency of that seizure.

"The mine workers would do so and work out an agreement with the representatives of government to govern the mines during the period they were under government control.

"Various things were agreed to, including the introducement of the Welfare and Retirement Fund. The limitation on work day to eight hours underground as against eight hours at the working place far inside the mines from the place of entrance. The payment for

travel time, the payment for lunch time, and various other items which were negotiated with the government.

"The operators encouraged the government to seize the mines to increase the responsibility of the Mine Workers. The government and the Mine Workers [3778] would cooperate and agree on these items of consequence. The operators would then demand their mines back, but one of the conditions of terminating the government control was that the operators would have to agree to write into the agreement all of these things that we had negotiated with the government while they were utilizing our mines, the operators' mines.

"All of those things in the end were accepted by the coal companies of this country after being instituted by the Government of the United States, after having their mines returned so they could operate them on their own account. Those items I have mentioned and a number of others were assembled and written into the 1950 agreement.

"Q The 1950 agreement recites on its face, as I recall it, that the wage increase which was granted by that agreement was a wage increase of 70 cents per day, as we call it, across the board. That is for all job classifications?

"A That is my recollection, sir.

"Q Seventy cents a day was the increase. During the period that negotiations were going on and the period between the date that notice was given of the termination of the 1948 agreement in '50, was there some substantial litigation between the—well, instituted by the government and operators?

"A Well, yes, during the period of the '40s, [3779] particularly, and '49.

"Q And after the litigation was terminated

was the 1950 agreement immediately executed?

"A Yes, substantially.

"Q Now, with reference to certain of the clauses in the 1950 agreement or subsequent agreement to which reference has been made in this lawsuit, I want to mention one or two of them. One I want to refer to is what is known as the 'land lease' provision which, I believe under the record, it is already here in front of the Court, originated with the 1943 agreement—that is, the 1943 collective bargaining agreement between the operators and the miners or the miners' union.

"What is the 'land lease' provision, in substance? Maybe I ought to ask what is its purpose, the provision of the agreement which provides that the operators will not lease lands, coal lands that they own to other operators for the purpose of subterfuge or in order to effect an unfair wage scale. Tell us about it, please.

"A The land lease arrangement or demand on the part of the Mine Workers was merely to tighten up the processes of collective bargaining and prevent any coal company from chiseling away at the agreement and by subterfuge sub-leasing or sub-contracting certain parts of the work essential to a coal mine or mines.

[3780] "We wanted to deal with the same employers as affecting all the operations of the coal mine of which he was the owner or the representative of the owner, and it was merely done to eliminate the subcontracting to irresponsible individuals without credit or assets who frequently failed to meet their payrolls and cause destitution and poverty among our people and increased it.

"There are many ramifications of those chiseling practices by irresponsible operators but those are the chief reasons why the Mine Workers desired that.

"Q The first time that this is inserted in one of the contracts—these contracts are all in the record," and they are here, too, "and this reads thus:

"'The operators agree that they will not lease any operating mines subject to this supplemental agreement as a subterfuge for the purpose of avoiding the provisions of this supplemental agreement.'

"Is that the way you recall it?

"A Yes.

"Q In other words, in order to prevent an operator from subleasing his property out to someone that would produce it at a subnormal price after he had signed an agreement?

"A That is right, sir.

"Q Was that done for the purpose, was the [3781] entering into of this land lease provision in these contracts and the carrying of it through the contracts for the purpose of forcing small or other operators out of business?

"A Oh, no. It had no relation at all to that question. It was merely protecting the wage standards and the conditions of the working miner.

"Q And for that purpose alone?

"A That is right.

"Q The question is raised about the so-called protective wage clause which is in the 1958 agreement. I mean—yes, the 1958 agreement. And I read from that portion of that clause or a portion of that clause is contained in the 1958 agreement:

"'It is recognized that when signatory operators mine, prepare or procure or acquire under subcontract arrangements bituminous coal mined under terms and conditions less favorable than those provided for in this contract, they deprive employees of employment opportunities,

employment conditions, and other benefits which these employees are entitled to have safeguarded, stabilized and protected. Accordingly, the operators agree that all bituminous coal mined, produced or prepared by them or any of them, or procured or acquired by them or any of them under a subcontract arrangement, shall be and shall have been mined or produced under terms and conditions which are as favorable to the employees as those provided for in this contract.'

[3782] "Will you comment on it and explain the purpose of it and why it was entered into?

"A Substantially for the purposes enumerated in general terms in that contract. There had grown up in the marketing area of the coal industry certain practices that impacted severely upon the membership of the United Mine Workers, affected the stability of their joint industry contracts and impaired their annual earnings and the future security of their job.

"For instance, a coal company might engage to deliver a million tons of coal to the docks on the upper lakes or in the Canadian market or to a public utility in the United States, or to any other consumer of coal in volume, at a certain price based on his cost of production, all of those things being jointly agreed to between the contracting parties.

"He would then go out on the highways and byways and he would buy himself a half million tons of coal from mines that were working at subnormal wages and subnormal conditions, below the recognized American standards and below the wages paid to the original operator that had a contract with the United Mine Workers. The result would be that mine lose half of the employment providing, mining a million tons of coal. Their work would be interrupted. The operator would blend

[3783] this half million tons of coal with the half million

tons of coal produced at his own mine and increase his profit under the contract by the margin that he could save, at the price of depreciating work opportunity for the men that he employed.

"We felt that was not a good thing carrying out the contract. It was not constructive and made the mine workers the victim of the market manipulation. That was the chief and only reason, outside of those enumerated there, why that was done and insisted upon.

"Q In other words, the purpose of the insertion of this clause was to protect the members of your organization as your constitution provided you should protect them?

"A And only the members of our organization.

"Q Did you insist or the Mine Workers insist on that inclusion of the provision into the 1958 agreement?

"A Yes.

"Q What about the operators, were they docile to it or were they bitterly opposed to it?

"A I think there was some objection, not impressive on the part of some of the operators and speaking for the record sometimes, but we encountered a helpful reaction among most of the operating companies.

"Q But the provision was inserted upon your insistence?

"A Upon our insistence.

[3784] "Q Of the United Mine Workers?

"A Certainly so. They would not have considered it for a moment without our insistence.

"Q And was the same thing true of the land lease provision we talked about a few minutes ago? Was that demanded and insisted upon by the union?

"A Oh, yes, sir.

"Q In other words, it was at the insistence of the

union that these two clauses went into these contracts?

"A Quite so.

* * *

[3785] "Q And at any time since 1952, and the enactment of the provisions, 1950—what did I say? 1950, that was the 1950 agreement. I am mistaken. The 1950 agreement, the clause that has been in there has been the same and the union has insisted upon its operation, carrying it out, since 1952? I will read it to you, Mr. Lewis, and I am reading from the 1952 contract:

"'As a part of the consideration of this agreement, the operators signatory hereto agree that this agreement covers the operation of all of the coal lands owned or held under lease by them, or any of them, or by any subsidiary or affiliate at the date of this agreement, or acquired during its term which may hereafter (during the term of this agreement) be put into production. The said operators agree that they will not lease out any coal lands as a subterfuge for the purpose of avoiding the application of this agreement.'"

"Now, that is the clause that has been carried in since the 1950 agreement?

"A Yes.

[3786] "Q Oh, there is a slight change in the first sentence between the one I read earlier and '52, but since 1952 that has been the exact language?

"A That is right, as I recall it.

"Q Mr. Lewis, what was the origin—you have mentioned it briefly a moment ago—but what was the origin of the Welfare Fund or Welfare and Retirement Fund that is carried presently as the provision in the contract of the United Mine Workers of America with its operators?

"A It was negotiated on May 29, 1946, with the

Secretary of the Interior, who was acting as the agent of the President in the administration of coal mines seized by executive order. It had been one of the demands of the Mine Workers of the year previously in the joint conference with the operators and was resisted by the operators successfully. We pressed a fight for its recognition in 1945. The mines were seized by the government and then the government negotiated substantially the welfare clause that exists today, except for the changes in the amount of the royalty payment.

"The declaration of principles and the purpose of the trust created under this joint contract with the government were defined, and they are still a part of the existing agreements made subsequent to that time. Substantially it was intended to provide medical service,
[3787] hospitalization, pensions, rehabilitation and opportunity for injured mine workers, training them for other jobs, if they recovered sufficiently, to make it medically possible, and was hailed as a tremendous step forward by the government in the humanitarian treatment of the men who were employed in this most hazardous of all industry.

"Counsel will understand, I hope, that aside from the fatalities and hundreds of thousands of injuries a year, mine workers are affected by vocational ailments that shorten their lives, a long list of them, and the rate of fatality from many of the pulmonary ailments is much higher among coal miners than it is the rest of the population. So the mortality they suffer and the human agony that they and their families endure is greater than can be compared with any industry now in existence in the civilized world.

"So, the succeeding agreements that have occurred since 1945, '46, have carefully included the welfare plan,

the trust agreement, and the grant of authority from the industry to operate. They might have taken away in those conferences, if they had been able to, the miners' shoes and his wages, but he couldn't take away, they couldn't take away the Welfare Fund, more valuable than silver and gold or pearls of great price, and the progress that has been made. The medical treatment of mine workers since that time has been an astonishing progress,
[3788] that has lengthened the lives, increased the well-being, made for less widows and orphans in the industry than any other institution that has had to deal with the mine workers since the 10th century when coal was discovered in the Forest of Deane.

"Since that time, may I add, since 1946, perhaps, there were no welfare arrangements or pension plans except a few weak images of plans established by a few corporations in the country and dominated by them, and now the Department of Labor reports that over 70 million workers in American industry are covered by some form or other of negotiated welfare and pension plans.

"It must have some virtue to be accepted and sought by 70 million workers whose clamor and demand for that protection has been enforced by nearly 200 million Americans.

"Q In other words, the United Mine Workers were the pioneer in the setting up through this negotiation—first rejected by the operators and then accepted by the Federal Government and then carried back into the later contracts—have been the pioneer in the establishment of welfare funds of this nature?

"A That's right."

MR. COMBS: This is Mr. Kramer, "I want to read from the contract of 1950, the provisions with reference to the Welfare and Retirement Fund rather than ask the

witness to read it, and I read from Page 3 of the
[3789] collective bargaining agreement of March 5, 1950.

"This is one, your Honor, in which they say is the beginning of the time of the starting of the conspiracy, and I want to read what the Welfare Fund is."

This contract that is an exhibit here is the same contract and it's the same page. I quote:

"'It is hereby stipulated and agreed by the contracting parties hereto that there is hereby created a fund to be designated and known as the "United Mine Workers of America Welfare and Retirement Fund of 1950." During the life of this agreement, there shall be paid into such fund by each operator's signatory hereto the sum of 30 cents per ton of 2,000 pounds on each ton of coal produced for use or for sale. Such fund shall have its place of business in Washington, District of Columbia, and it shall be operated by board of trustees, one of whom shall be appointed as a representative of the employers, one of whom shall be appointed as a representative of the United Mine Workers of America, and one of whom shall be a neutral party, selected by the other two. In the event of resignation, death, inability or unwillingness to serve of the trustee appointed by the operators or the trustee appointed by the United Mine Workers of America, the operators shall appoint the successor of the trustee originally appointed by them and the United Mine Workers of America shall appoint the successor of the
[3790] trustee originally appointed by it.

"'The operators signatory hereto do hereby appoint Charles A. Owen, of New York City, as their representative on said board of trustees. The United Mine Workers of America do hereby appoint John L. Lewis, of Washington, D. C., as its representative on said board of trustees. It is further stipulated and

agreed by the joint contracting parties that Josephine Roche, of Denver, Colorado, is appointed as the neutral trustee. Said three trustees so named and designated shall constitute the board of trustees of administer the fund herein created.

"'In the event of a deadlock on the designation or agreement as to any future neutral trustee, an impartial umpire shall be selected.

"'It is agreed by the contracting parties hereto that the trustees herein provided for shall serve for the duration of this contract and as long thereafter as the proper continuation and administration of said trust shall require.

"'It is agreed that this fund is an irrevocable trust created pursuant to Section 302 (c) of the "Labor-Management Relations Act, 1947" and shall endure as long as the purposes for its creation shall exist. Said purposes shall be to make payments from principal or income or both, of (1) benefits to employees of said operators, their families and dependents for
[3791] medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance or accident insurance; (2) benefits with respect to wage loss not otherwise compensated for at all or adequately by tax supported agency created by federal or state law; (3) benefits on account of sickness, temporary disability, permanent disability, death or retirement; (4) benefits for any and all other purposes which may be specified, provided for or permitted in Section 302 (c) of the "Labor-Management Relations Act, 1947," as agreed upon from time to time by the trustees, including the making of any or all of the foregoing benefits applicable to the individual

members of the operators other than those exempted from this agreement; and (5) benefits for all other related welfare purposes as may be determined by the trustees within the scope of the provisions of the aforesaid "Labor-Management Relations Act, 1947," subject to the stated purposes of this fund, the trustees shall have full authority, within the terms and provisions of the "Labor-Management Relations Act of 1947," and other applicable law, with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds and all other
[3792] related matters.'"

Then omit two paragraphs.

"'Title to all the monies paid into and or due and owing said fund shall be vested in and remain exclusively in the trustees of the fund, and it is the intention of the parties hereto that said fund shall constitute an irrevocable trust and that no benefits or monies payable from this fund shall be subject to any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void. The monies to be paid into said fund shall not constitute or be deemed wages due to the individual mine worker, nor shall said monies in any manner be liable for or subject to the debts, contracts, liabilities or torts of the parties entitled to such money, that is, the beneficiaries of said trust under the terms of this agreement.

"'The obligation to make payments to the "United Mine Workers of America Welfare and Retirement Fund of 1950" under this contract shall become effective on March 6, 1950.'

"And then provides for the dates of payment.

"'It shall be the duty of the operators signatory thereto, and each of them, to keep said payments due said fund, and hereinabove described and provided for, current and to furnish to the United Mine Workers of
[3793] America and to the trustees hereinabove designated a monthly statement showing the full amount due hereunder for all coal produced for use or for sale from each of the several individual mines owned or operated by the said operators signatory hereto.'

"It provides for an annual audit of the fund by competent authorities designated by the trustees."

"Q Mr. Lewis, when we recessed a few moments ago, we were talking about or had just finished reading a portion of the collective bargaining agreement of 1951, which set forth in the welfare and retirement provisions, that is, the trust provisions as contained in that contract.

"I want to talk now, or ask you briefly about this—your connection with the Welfare and Retirement Fund, United Mine Workers of America Welfare and Retirement Fund.

"Mr. Lewis, you have been a member of the board of trustees of this welfare fund since 1950, and were also a trustee of the previous fund under the 1946 and '47 contracts?

"A That is correct, Mr. Counselor.

* * *

[3807] "Q Mr. Lewis, it has been testified in this record, or there is some indication that the United Mine Workers has attempted to favor certain mines, because it was trying to get them mechanized to the injury of smaller or other mines. Would you mind going briefly into the United Mine Workers' philosophy with reference to mechanization in the coal industry?

"A I think the first mining machine came into the industry when I was in my teens somewhere and
[3808] it was a shearing machine. The mine workers called it the 'iron man', and some of them expressed dissatisfaction with it because it ultimately would put men out of jobs, so they said. As the years went by, they were improved. Machines of greater versatility and maneuverability underground were developed so the coal was undercut, an addition to being sheared in a vertical fashion with the old machine. And from time to time it got so the operators of those machines and perhaps one man assisting on those machines were paid sums of money above the going rate that affected the daily wage rate of the men employed by the day with the company.

"And in later years the union never opposed the union machine.

"Q Never what?

"A Never opposed the introduction of the machine, because we recognized that if this free enterprise system that exists in the United States, investment for profits, reward for incentive, capitalism, call it what you may, could only endure in the world of international competition, if it could expand its processes, increase productivity and given anticipation in the bounds of free enterprise and the natural resources which providence provided here in the United States; that otherwise there would not be an opportunity for your young men and women coming in increasing number each year in a rapidly expanding
population, that we just had to improve the
[3809] processes of mining coal, and we accepted the machine.

"We maintained this principle which we enunciated from time to time, that God didn't put in the mind of a

genius an idea to create a machine that would do the work—displace ten men and do the work of ten or more, for the sole advantage of the coal operator, or the company that manufactured the machine, and we demanded a participation for all of the employees in a mechanized mine in the advantages of the increased productivity. So that has been the case through the years.

"The competitive relationships of the industry to the rest of the company required the production to raise it.

"Q Explain what you mean by that, Mr. Lewis.

"A I meant if the coal industry hadn't lowered its cost to increase productivity per man employed, it would succumbed to its competitor.

"Q What?

"A To wit, oil, gas, diversified fuels made from either coal or petroleum bases, and world competition. So it was necessary for the coal industry to sell its wares in a market that critically looked at prices always, and turned to substitutes if the prices didn't suit the way of the market place.

"At the time and in those years, the railroads [3810] were the chief consumer of coal in this country. They consumed one-third of the annual national production.

"At the time the railroads were buying one-third of the national production of coal and were the biggest customer. They consumed it in their steam locomotives and transported freight and passengers throughout the country. Sixteen per cent went into private homes, domiciles and mercantile establishments. Other percentages were used in the chemical industry, in the coke industry to a degree.

"We used to have annual appreciations where certain markets were tapped. In late June or July, the harvest

would cause an appreciation of coal sales and provide more work for the miners, because all threshing machines throughout the country were coal-burning and people looked forward to the time when the harvest came.

"In the fall of the year, school houses came because the school houses throughout the nation, some of them far remote from settlements, had to be filled up with coal for the winter, most especially in those areas where the climatic conditions would make it difficult to transport coal in the wintertime.

"Then we had the lake trade that took coal up in the summertime to the northern provinces of Canada and our own areas up there.

"That is changed. The railroads went to
[3811] diesel; the school houses were consolidated, had central heating, generally with oil or gas; and the little red school house far out in the country that used to have a stove and the scholars would carry the coal in and the school teacher would build a fire in the morning, the coal house is gone, but there is a butane tank there, giving them heat out of a gas tank made from a petroleum base. So that is gone.

"So constantly the coal industry has had to change the basis of its hope for business. In recent years, one of the great things that has been in the increase in the usage of electric power, and the fact that within the distance of reasonable transport, coal will produce power more cheaply than oil or gas, and much more cheaply than water power when one considers the original investment in water power. Only the government can develop water power projects, such as the TVA, because a private investor couldn't make a return on the vast investment required for the costly constructions of dams and retaining areas for water. Very rarely has any of those projects

been finished in this country except under government aegis.

"Now, the government is growing, and the electric power industry is the largest consumer of coal now. We think that research is coming into its own, and for the first time the government has charted a course now in cooperation with the mining industry for exhaus-
[3812] tive future studies of the chemical resources of coal, and what can be liquified and segregated.

"I am sure counsel knows that contained in our coal measures are all of the organic values of ends of time that can be compressed into this storehouse represented by our coal seams, and everything of organic value that the world developed or created during those periods when coal was formed is contained and locked up in the chunks of coal that we bring out of this ground.

"We already know how to eliminate—how to take out thousands of products. Some I think can be taken out competitively. Others cannot be taken out competitively, and we know there are thousands of subdivisions rests upon our genius and our technique and our educational potentials to isolate those values and make them of value to the current world who are given them by nature and providence.

"So the Mine Workers never opposed the introduction of machines, because they believed that it was inherently necessary to preserve free enterprise and our concept of the freedoms inherent in the American form of government. Right now free enterprise is on trial all over this world by more absolute forms of government, with power to commandeer the services of men under any conditions they describe, and for as little as they may elect to provide, and we have these expanding populations

[3813] that are going to flow over the boundaries of these political subdivisions of the earth in great lands to the tune of millions of people, because they are asking also for bread and participation and some of the liberties inherent in the concept of government we have here in our country.

"The communist threat that blooms on the horizon and occupies the daily attention of every citizen of this land, what about it? They are increasing their production by commandeering the brains and the hands and the strength of the population that is in multitude, and there is visible what some of the things they are doing.

"Three years ago, I addressed the American Mining Congress in Cincinnati, in June, and I told them at the end of that year, Russia would exceed in gross value the coal production of the United States, and it did. It did.

"What are they doing with that coal? They are putting it into the Mediterranean and driving out American coal; they are putting it into the Baltic countries and driving out American coal; they are putting it into the continent. The Polish mines under their direction are turning out increased volumes of coal at prices that will shove the American exports out of those countries. They are driving us out of our consuming areas in South America for coal, the Argentine and the other countries down there, so who is the man who can say that we don't need to lower our cost of production in the United
[3814] States, that the machines displaced manpower in the mines, and therefore is a curse?

"He is the man, whether he understands it or not, who is advocating that America cannot improve its technical processes and wait to be overwhelmed by the gigantic quantities of goods which other nations at lower wages and under abominable conditions and under dictatorship

will dump into the world market to the entire exclusion of the free enterprise economy.

"There is more at stake in this proposition than the welfare of one coal company or any group of coal companies.

"We are a free enterprise nation. We are dedicated to the principle of retaining competition in our free enterprise institutions. And to say that we can live in this advancing world and find employment and participation for the 220 million estimated population we will have in 1975 is just an absurdity. And unless we can find jobs and participation for this million and a half or so of young people who come into the world employment market every year with their professional educations and their vocational educations and their training, representing great sacrifice upon the part of the families and the students to seek that, unless we can provide employment for them it is not a reason to expect that they will long remain proponents of free enterprise that don't
[3815] permit them to enter and participate.

"That is the problem of America and the coal industry can't be too proficient because progress is going on and we have a definite renaissance in America and in the world today and no one can predict the invention of tomorrow, so we have not opposed the mine machine.

"We have sought to make advantages out of it and a participation in its elements of virtue on the part of the people we represent. And let me tell you in doing so it has been to the advantage of the coal-consuming public of the United States because the price of coal at the mine today in the United States is from 40 to 65 cents per ton less than it was in 1950 or 1948.

"Q Due to what?

"A Due to improved efficiency in the production of

coal and the taking of it from the ground, and to the manner of its preparation that removes the impurities and makes it burn.

"Q Mr. Lewis, let me stop you just a moment and take up on a similar line but a little different approach.

"Can you give us some idea of the difference in proficiency or efficiency of coal production per man, take tons per hour or tons per day, today as it was at the end of World War I, beginning of World War II and the end of World War II.

[3816] "A Well, after eleven years—no, probably fourteen years—of nationalization of the coal mines in Great Britain by an Act of Parliament, they are nationalized, the government operates them.

"Q The government took them over in Great Britain?

"A Yes. First, they took over the coal mines and then later they took over the operating companies, made it a complete nationalization, and after all those years of experimentation they have got the coal produced per man day in Great Britain up to 1.23 tons per day per man.

"On the continent it is somewhat less. The last set of figures I remember was .83 tons per man employed per day in Belgium and in France and in Austria.

"In Japan their production per man per day employed in their mines is equal to the tonnage produced in one of our coal mines in 18 days by an American miner. The American miner produces a value in 18 days amounting to the entire value of a year's work of Japanese miners.

"In India, at its greatest open surplus mine, which is the greatest of all their mines, it produces 10,000 tons a day and it only required 16,000 employees per day to do it, working three shifts, around the clock, 10,000, 16,000 employees. The average wage for the men is 37 cents a day.

"Q How much

"A Thirty-seven cents a day. The earth
[3817] is removed by women carrying the earth in baskets on their head. Some of the women clean the small particles but small children pick the particles of dirt and scrubble out of the coal. Men, women and children work in that mine around the clock, three shifts, 16,000 in number, getting 10,000 tons.

"Q We want to finish this before we have to recess. Now bring us down to the United States.

"A Twelve tons per man day as I speak to you, the average of all the mines in the United States, and that average is depressed by the fact that in that average there are several thousand small or inefficiently equipped mines that produce a much lesser tonnage, so it depresses the national average.

"We have mines right now that are producing 28, 30 and 40 tons per man day—not the average. The average is 12. That includes every little mine that produces coal that is reportable.

"In World War I the average produced was three tons per man day.

"Q In the United States?

"A In the United States. And in World War II there was an average of six tons per man day, but in World War II they produced 125 million tons more coal in the maximum year of our production with 300,000 less men. The Armed Forces—the United Mine Workers had 178,000 of its men in the Armed Forces.

[3818] "That is the record efficiency, and since World War I the increase has gone up from an average—since World War II, from an average of six tons at that time until the national average of 12 tons right now.

"That is the reason we were able to put our coal down in Germany and continental areas in Europe at as high as two and three dollars a ton cheaper than that country can produce it in its own mines with its own nationals.

"Germany has barred us out except for a limited tonnage. They put up a road block against our imports. They have got a tariff against American coal of $4.78 a ton. I think that is right. I am quoting from memory but I think that is the accurate figures.

"They can't compete with us in the field of economics so they erect this important barrier and only against American coal—not against anybody else's coal.

"Those are the things that are happening and all these questions run to the future of America and the ability of its economic establishment, and a sick industry can't exist in the United States with impunity because it affects other industry and under the modern integration and complexity of our economic system if the coal industry is depressed, or the steel industry is depressed, every major industry will likewise feel the effects of
[3819] their misfortune.

"Q And now in conclusion—it's twelve o'clock—but without mechanization as it exists in the mining industry today, it would be a hopeless industry in America, would it not?

"A Quite so, sir. Quite so. I don't see how they could ever get—well, in the first place, the economy wouldn't have advanced currently like what we have now.

"Q Mr. Lewis, are you familiar with the Walsh-Healey Act and its enactment by Congress?

"A Yes, sir.

"Q Did the United Mine Workers, and you as president of United Mine Workers, advocate the enactment of that statute?

"A Yes.

"Q Why?

"A Because it created an American standard of employment level and living conditions and, in effect, a minimum wage in those industries that supplied the government with the various commodities, and became in the intent of Congress the American standard, below which wages shouldn't be paid, entering into the field of pauper labor and sweatshop production. We favored that as an act of general policy to increase the living standards of Americans, increase their buying power, give them a greater participation in the value of their services and the work of the government. We [3820] favored it in principle.

"Q In connection with the carrying out of the provisions of the Walsh-Healey Act, I believe the Secretary of Labor of the Federal Government conducted certain hearings, did he not?

"A That is right.

"Q Did the United Mine Workers of America participate in those hearings insofar as they affected the production and sale of coal, or the sale of coal?

"A Yes, in cooperation with the hearings and the Secretary of Labor, in securing the establishment of the recognized Walsh-Healey base in the coal industry in which given concerns spend tax money, the TVA among others.

"Q And under a finding by the Secretary of Labor, there is an established prevailing wage for the commodity in a given area, is there not?

"A That is right.

"Q And people selling that commodity to an agency of the Federal Government, in order to get awards or contracts with the Federal Government, must comply

with that prevailing wage?

"A That is right, in all contracts exceeding in value of $10,000.

"Q Now, in connection with the Walsh-Healey Act and the TVA, did you have and the United Mine
[3821] Workers have any connection with TVA in connection with the enforcement of the Walsh-Healey Act?

"A We have at times had representatives confer with the officials of TVA urging them as an establishment operating on tax money to patronize those concerns that paid the American standard of wages as defined by Congress, not with respect to any individual buyer, not with respect to whether the United Mine Workers of America had contracts with those interests. It was immaterial. We wanted to protect the American standard of wages. And to go on from there and improve as circumstances would permit and our influence bring about. That is all.

"Q In other words, to urge that TVA comply with the requirements of Walsh-Healey in the award of contracts?

"A Yes. TVA had a practice of buying from exploited industries or debased industries or substandard industries in lots of less than $10,000 so as to escape the provisions of the Act. They would give multiple contracts of that kind, so sometimes they would sell the TVA 50,000 tons, or 100,000 tons by having a series of less than $10,000 value contracts. We protested that as a subterfuge and not good faith compliance with the statute enacted by the Congress.

"Q And in that connection you never made any protest, did you, whether the coal purchased was from a union mine or from a non-union mine?

[3822] "A Never at any time. Nor with respect to any particular or specific coal company in the industry.

"Q In that connection, was there any effort made to put any small or large mine or any other mine operator out of business?

"A Never at any time and was furthermore from our intent or our thoughts.

"Q Mr. Lewis, has the United Mine Workers of America at any time joined with or agreed with any coal operator, made any agreement with any coal operator to influence either pricing or operation of mines for the purpose of putting any operator out of business?

"A Never in the entire history of the union as I know it.

"Q Have you ever been a party to any agreement with reference to the pricing of coal?

"A I have not, neither in an individual capacity nor an official capacity as representative of the union, nor other labor organizations when I was representing other labor organizations.

"Q Or with any capitalist group or financial group?

"A With no capitalist and no vagabond."

CROSS-EXAMINATION

(Mr. Rowntree read the questions and Mr. Chambliss the answers.)

[3822-A] "Q I believe it has been your position or your statement that fewer and fewer units of production will take over the production of coal in this country?

"A Due not to any action of the United Mine Workers of coal industry, but the trend of the American economy under the free enterprise system in connection with all

the other producing countries of the world, yes, and I embellished that reference by giving some of the reasons for it, as I recall it.

"Q I believe it is your statement that these combines that are being formed through mergers in the coal production industry are able to make tremendous savings in their operating costs through—

"A Not—

"Q Just a moment, please. Through mechanization, through term contracts with the coal market and other things, savings of costs that are not available to the smaller companies.

"A Those combines to which I do not refer with the qualifying language that you use, I say that is a matter of common knowledge that a larger company in our competitive world, producing any commodity of national usage, certainly can make some saving by having a larger volume of production, or if combining a number of units of productivity in that particular field. Certainly it is recognized that a large company needs to [3823] spend less money for sales cost for larger volumes of coal. The same is true on management. The same is true on the purchase of supplies. The same is true in regard to managerial responsibilities and preoccupation. That is attested to in every industry in the country by the law that exists there in competition with lesser units of capital that are invested in that industry, and it is common practice thinking, merely a recognition of the trend of the economy, for the reasons that are understandable.

"Q And the same is true with respect to investment of millions of dollars in mechanization, the employment of 100-yard stripping shovels, the use of continuous mining machines?

"A United Mine Workers have no restraint on how large a piece of equipment should be, or what its capacit may be. There is constantly experimentation and research in the field of manufacturing by the equipment manufacturing companies in this country, and it is like our present-day maritime fleet, bears no resemblance to the maritime fleet of World War I.

"The Liberty ships are obsolete in this modern age, and they can't compete on the high seas with the improve units, faster and greater capacity, with less overhead, a quicker turn-around, all of those things having to do with the cost per unit that they deal with.

[3824] "Q And so these large combines are able to make savings in cost?

"A I do not know what you refer to as large combines.

"Q Well, we will go back to that right now.

"A But it is obvious if a man has a department managing his mine and his sales organization selling coal, that it is conceivable that both departments can account for more tonnage if they had it in the market and could sell their coal at a price sufficiently low to attract buyers in the market. Those things are axiomatic and fundamental and plain "ABC" in the management of modern industry.

"Q Now, Mr. Lewis, you have brought into this case this struggle between communism and the free enterprise system, and I should like to review that question from our standpoint.

"Is it not true that the backbone of the free enterprise system is equality of opportunity?

"A You may have that viewpoint. At the moment, I am a little cloudy how to fit it into the complex economy and the interdependence of our economic units upon each other.

"Q All right, sir. I think the record is clear that the United Mine Workers have one contract, one contract for all companies, large or small, regardless of working conditions, regardless of finances, regardless
[3825] of ability to pay, is that not right?

"A That has been the policy of the union through the years, but not achieved in its entirety, and while we like to negotiate contracts similar in nature on the theory that equal service or specially skilled service in a coal mine is worth just as much to the individual in Tennessee as it is in Pennsylvania, we hold that the mine worker in Tennessee is entitled to the same wages for the same work and service performed underground or above-ground as the case may be. However, we have not been able to achieve that goal in its entirety, although it has been a policy of the organization for many, many years, it's only in certain areas that we have achieved that, and we have many contracts that do not equal all of the provisions of the National Bituminous Coal Contracts. There is differentials still in increasing the—

"Q It is true that the increases since 1950 have been uniform throughout the country for all companies?

"A No, I think—no, I think there are certain differentials inherently—the wage increases are applied uniformly.

"Q That's what I asked. But the basic features that previously existed, different yardage rate, different car rates, different day rates for the same classifications.

"Now, these men in Tennessee are entitled
[3826] to work on an equal opportunity basis with the miners of the large companies, are they not?

"A Are you talking, sir, from the basis of equity?

"Q I am talking—

"A Or economic circumstances and the limitations

that places upon negotiating parties?

"Q I am talking about fundamental rights under our free enterprise system, that men should have the equal opportunity to work all over this country.

"A No, I think that is a generally recognized principle.

"Q All right, sir.

"A Accepted abstractly and academically by the population, and yet all is not existent locally and in communities and areas.

* * *

[3833] "Q Let's turn to the traditional management-labor relations field, and there are checks and balances in that field, too, aren't there, protecting the rights of management on the one hand and protecting the rights of labor, the employees, on the other hand, isn't that right?

"A I think that every individual has a check by his own inherent limitations. He may be able to sustain a viewpoint at some loss to himself and to some sacrifice to his family for a limited length of time, but not indefinitely. The same way with miners and operators. When the operators are afraid the government will seize the mine, the government took their names and operated them to the account of the government. Then they made an agreement with the people and representatives that the operators refused to agree with. Then they asked for their mines back.

"Well, they were in position of wanted to negotiate, but they didn't have mines upon which to negotiate. And all the Mine Workers had to do was wait until
[3834] they got into a mood of accepting the basis of settlement which the Government of the United States, with the approval of the President and with the

consent of the Congress, had approved.

"Q Let's go to—

"A Now, they were checked and limited and balanced to death there, weren't they?

"Q Let's get over here on this check and balance with respect to employer and employee. Now, the employees looked to their union to take care of their rights in an organized business, isn't that right?

"A Well, I have been under that assumption.

"Q Now, isn't the most basic need of an employee, the need to have a job so that he can make a living to support his family, survive, isn't that right?

"A I think it is elementary.

"Q All right.

"A There's about seven million of them now in the same position now in the country.

"Q And the United Mine Workers diligently pursued the rights of the employees in the coal industry until 1950, did they not?

"A Until this date.

"Q All right.

"A Until this date.

"Q And until 1950, you maintained that
[3835] there should be equal opportunity to work among the coal miners of the country?

"A We have always maintained the same position, and the principles and the objectives were written and defined long ago, and there has been no departure by the United Mine Workers from those principles and those policies on the date you seem enamored by, 1950, or any other date that you might dig up in the calendar. I would prefer you to use the Gregorian calendar.

"Q But in 1948, 1949 and early 1950, you were urging the industry to split the work, to equalize the

work opportunities, to reduce the working time to three days a week. In spite of the great, tremendous investments that these companies had and these modern mechanized mines, you were urging them to cut down on their working time to three days week and spread the work throughout the industry, to all the employees, pursuing the basic right of employees everywhere to work, isn't that true?

"A It pains me greatly to disagree with the nice speech of the counsel, but the answer to all of your accusations in that short narration is no, you are wrong, we did not urge the establishment of a 3-day week in this country, neither then, before, or since.

"However, it was alleged in the public press, ofttimes by the utterance of opinions of men of little
[3836] knowledge on the subject, that there was going to be an immediate shortage of coal and a crisis in the country if the strike wasn't settled.

"Q You are talking about the negotiations in the 19—

"A The Mine Workers knew there was no coal shortage, that every facility of the nation was going to run, that there was nobody without coal, because we had a very substantial knowledge of exactly how many tons of coal were above the ground in the United States of America, where it was stored, who owned it, and its availability for usage. That is our business to know those things.

"So, in order to quiet, suppress the headlines in the newspaper and detract somewhat from the efficiency of the public orators on this question, and some of our major politicians who sought to make political capital out of berating the United Mine Workers of America, we offered, pending negotiations, and pending the final completion of a new contract, to let the mine work three days a week.

"Q And you say that that is—

"A That was a stipulation that we put on merely to abate that uproar and at the same time preserve some of our bargaining rights with the operators so as to finally limit the period of negotiations, rather.

"Q You say that is all this 3-day work week [3837] was?

"A That is all the 3-day work week was.

"Q All right, sir.

"A And let me say to you, sir, what I have already put on this record, so there will be no misunderstanding about it. The United Mine Workers of America could not have been persuaded to accept a 3-day work week, and if it was offered to us we would have rejected it then and now, because it limits too much the earning powers of our membership, and we think it is an idle, useless thing, to require a man to live around a coal mine for the opportunity of working three days a week and being idle four days a week.

"Q Mr. Lewis, isn't this testimony directly contrary to what you testified in your deposition?

"A No, I did not.

"Q All right. On Page 68 of your deposition, I refer you to this statement that you made in 1948 before these negotiations over the 1950 contract.

"'So next year in 1949 or at any other time when evil days come upon this industry, you will find the United Mine Workers of America moving in, and if there are only three days work in this industry, we will all have the three days work. These things are of the utmost importance. Conditions are not now as they were in the old days.'

"'Do you recall that statement?

"'Answer: Oh, yes, and I may say that those obser-

[3838] vations merely relate to one thing: The equitable distribution of work opportunity in the coal industry and the desire of the United Mine Workers to have the work opportunity more equitably distributed. It had nothing to do with any other subject.'

"Now, isn't that the correct testimony on this question?

"A Well, I reaffirmed those words now.

"Q Well, Mr. Lewis.

"A And I point out, which you seemingly are unfortunate that you are not familiar with all the technical details of the coal industry and it is a reasonable assumption that I am.

"Q I will admit readily that I am not.

"A But the rule was when demand fell off, certain companies having more than one mine, or perhaps a group of mines, would completely shut down one mine and leave those men idle, concentrate their tonnage—they may shut down two mines or three mines, before it is over, or four mines, to concentrate their production to fewer mines and giving a certain part of the employees of that company steady, everyday employment, while the rest of their employees were cut off from any employment whatsoever.

"Q Sure, that is exactly what I am talking about.

"A It relates to the equitable distribution

[3839] of the available work, and not as a limitation to production to a 3-day week.

"Q Well, I am not talking about the limitation of production. I am talking about the union pursuing the rights of the men to an equitable distribution of the work, looking about the interest of the employees in all the mines of the country.

"A It still recurs, Counselor, that ancient observation you have just pointed out there, has no relation to

the 3-day work week in principal that you were discussing previous to reading it.

"Q You are talking about the 3-day work week in there.

"A It just happened to be used there as a symbol, what the work might have been produced under certain circumstances. You have got to start somewhere in the week and it is in the middle of the week.

"Q And the next question:

"'And in 1949 and 1950, during the period that negotiations for the 1950 contract were going on, you did set 3-day work weeks and other types of work weeks in the industry?

"'Answer: We set a 3-day work week, yes, to distribute the work and the opportunity for work; and for no other reason.'

[3840] "A You mean that was a 3-day arrangement made qualification to bargaining?

"Q Yes, sir.

"A Well, they would not have worked three days if there had not been market enough to take the three days. That was used as a yardstick there and had no relation to the things that seemingly you have in your mind that there was a conspiracy to which we were a part that was designed to reek evil or disadvantage on other companies not under contract with the United Mine Workers of America. That is not true now and never has been true.

"Q I am not talking about that right now. I am talking about your purposes, your motives, your position taken before the 1950 contract. And this testimony that I have read from, that is correct, is it not, Mr. Lewis?

"A To what do you allude? Do you mean the transcript of the deposition?

"Q Deposition; that's right.

"A Anything in that transcript certainly is verified.

"Q All right, sir.

"A You will find nothing in that transcript, Counselor, that undoes or conflicts in interpretation with any expression that I have voiced here today in this honorable court, and all attempts to confuse me by comparison
[3841] of words will undoubtedly not confuse me.

"Q Mr. Lewis, this was an important item. You came in today and testified that this 3-day work week was a problem of just satisfying government authorities or some authority, or the people, with respect to the shortage of coal that was going on during the course of these negotiations because of the strike, and now I bring up—

"A I disagree heartily with your conclusion that is all that it was.

"Q Just a moment. I bring up—

"A Your understanding of these terms and mine are apparently somewhat dissimilar. I am talking from my knowledge of the industry. I assume you are talking from an abstract knowledge of it and a superficial indoctrination of some of these terms in question.

"Q I am not trying to be—what term did you use? I am not trying to indoctrinate anything. I am trying to figure out what happened in 1950, Mr. Lewis, and I say that this testimony that you gave in your deposition is true.

"Isn't it true, Mr. Lewis, with respect to the 3-day work week and the limitation on the working time in the industry, to distribute the work?

"A Sir, with all deference I will try to explain in laymen's language that the 3-day work week suggested for a limited time pending negotiations made on
[3842] that day and date and during that period to which

you allude, was merely a piece of bargaining strategy to place our opponents at a disadvantage.

"Q And you reject now your testimony?

"A And it is a technique sometimes used by distinguished attorneys in the profession, as I have cause to know.

"Q And you say now that you did not mean what you said back in 1948?

"A No, sir, I do not so say, sir, and I don't take kindly to your constantly trying to put words in my mouth.

"Q Well, I was reading from your deposition, Mr. Lewis.

"A Yes, but you were interpreting the deposition in a manner that I thought was inaccurate.

"Q I was reading it, Mr. Lewis, and comparing it with what you testified here today about the supplying of coal for a shortage that existed during those negotiations as being the only thing you had in mind about a 3-day work week.

"Now, Mr. Lewis, since 1950 the union has imposed this contract on all the small mines of the country and the has known that these small mines could not pay union terms; isn't that right?

"A No. It has never imposed a contract
[3843] on anyone. It has bargained collectively with
who is not a signatory of the industry contract, and it is not true that while doing so we were aware that they could not meet the provisions of the contract.

"That is an assumption entirely erroneous on the part of counsel, and I dislike to have words of that character put in my mouth.

"Q All right, Mr. Lewis. You have tried to sign up every mine in the country, haven't you, under the contract?

"A When?

"Q Since 1950. You started an international organizing committee in 1950, did you not?

"A We probably had the work in our organizing facilities then as in the time before and the time since.

"Q Well, there was an international organizing committee established by the International Union in 1950 after the contract of 1950?

"A I do not know what you mean by 'international organizing committee,' and I don't recall that verbage but if you mean that was their renewed emphasis on organizing, yes, because the United Mine Workers did not have to engage in a long struggle and it had finances free therefore to pursue its regular organizing work.

"Q I will read from the 1952 minutes, [3844] Page 267:

"'In October, 1950, an international organizing committee was set up by the International Executive Board to promote an intensified and integrated organizing campaign in the non-union areas of the bituminous coal industry.'

"That is correct, isn't it?

"A The board may have authorized renewed emphasi or renewed organization of the constant organizing effort at that time, but it did not mean any departure from recognized policies that had been more or less in effect all the time depending again on our resources to sustain their effort.

"Q But you did not put such emphasis on organizing efforts or set up that organizing committee until October, 1950?

"A Probably did not have any funds, but we had our resources free. You will remember in the 1940s practically, '50, we frequently had our funds tied up by in-

junctions and court procedure.

"Q Why was that?

"A And harassment generally speaking, from all quarters, both governmental and private.

"Q Particularly the large operators, right?

"A Particularly the large coal operators withheld our funds, yes, including the funds of the Welfare Fund.

"Q And you haven't had any trouble like [3845] that since 1950, have you?

"A Merely because there wasn't any controversy.

"Q That's right.

"A That broke out into a stoppage of employment.

"Q Now, with respect to this organizing, Mr. Kennedy said in 1952, Page 279:

"'We have had very little difficulty in organizing large units, but we have extreme difficulty in organizing strippings where the workers are taken from the farms and small towns adjacent to the stripping operations, but we are making pretty good progress and we shall continue to do so until the banner of this organization flies over every mine and every strip pit in the United States and Canada.'

"That was the purpose, wasn't it, to impose this contract on every mine in the country?

"A There are flowery phrases with which orders are given which remind me of a quotation from former President Lincoln when he said that, 'The day would come when the sun would shine upon no man in this country who goes forth to unrequitted toil.'

"That is the way orders are expressed, in sentiment. Those are the objectives, of course, the ultimate objective of any well-defined program but we do realize it is often interpreted and the objective is not reached as fast

as it might have been.

[3846] "So certainly, Mr. Kennedy, if it was Mr. Kennedy, was making a speech to inspire our representatives of the necessity of going forth and achieving some success in the task of organization.

"You will understand how vital new members are to a labor organization, or to the United Mine Workers, Counselor, because there is a natural day by day decimation of the ranks, numerical ranks, of a labor union due to natural reasons that are inherent, and unless they can attract new members and new blood that organization is doomed to ultimate dissolution.

"And the barrier is put in the way of organizing effort in some of our statutes which are now designed to lessen the efficiency of labor unions by making it more difficult for them to attract new members.

"Those are practical facts to be taken under consideration, but a labor union must struggle on or it will die. You got to breathe life into the people, they have to be encouraged when they are discouraged or when they are oppressed or when their privileges are denied to them.

"All of this was consistent and quite independent of any alleged conspiracy beginning in 1950 or any other time with the United Mine Workers with any co-conspirator anywhere in the United States—companies, corporations, individuals, private or otherwise."

* * *

[3850] "Q I think you have recognized on the record, Mr. Lewis, that many of these 'pallid, undernourished mines' would not be able to pay the kind of terms in this contract, the National Bituminous Coal Wage Agreement, and using another expression, 'the weak shall trail the strong till they fall'; those

[3851] things are true, aren't they, that many mines

could not pay this wage, this royalty of the Welfare and that they would fall after they became assigned to the contract?

"A I had no knowledge about any of them as to the capacity to meet the obligations of an industry contract, except that they averred and promised to meet those obligations when they executed the contract and they assumed a moral and a legal obligation when they entered the contract, when they signed it, and that no one has any information about the assets or the reserves or the credits or the managerial ability of any mine of his own knowledge. That information is all known to the company and to the company alone.

"Q But you knew the assets, the financial position, the abilities to pay of the major coal companies; I believe you have testified about that, haven't you?

"A I don't recall major coal companies right now. An isolated special case? I don't recall it at the moment what significance it has.

"Q This case here. This case here, you have testified that the Mine Workers were thoroughly familiar with the abilities, the financial standing and so forth of the major coal companies?

"A But not the miscellaneous coal companies.

"Q That is right.

[3852] "A And not the remote coal companies.

"Q That is right.

"A And not the companies of which we had no knowledge at all.

"Q And the small coal companies?

"A Well, naturally it would be included in the list of a lot of small companies in that category, but also a lot of large companies, family-owned mines, of some sizable production, that suffer loss in assets and in

credit every time there is a change in the family tenure of office and inheritance taxes impose another obligation on those companies. They ofttimes have insufficient credit to buy the modern equipment that they would like to buy, but they are hanging onto the corporation and the job as long as it lasts, until some day the sheriff will come along inevitably.

"Q These coal companies in that category were offered the same contract, the same contract terms as the large mechanical companies?

"A That is right. That is right. They were offered the same, the contract with the same wages, advances that took place elsewhere, but not the fundamental conditions that may have been previously negotiated in that district, and in some areas there is a differential existing, as I have heretofore said."

MR. ROWNTREE: I'd like to skip over to [3853] the top of 1162.

"Q These organizers in the field, with the caravans of cars, would not offer any lesser contract than the terms contained in the national contract?

"A They were not authorized to take any less wage than was the policy of the organization.

"Q And the union has been very successful in its organizing work under the international organizing committee, is that not so?

"A I wouldn't say so, no.

"Q Well, what per cent of production has been organized under the contract? I believe you said one time 82 per cent as compared to 18?

"A I think it would be around 80 percent, 82 per cent, 83 and maybe back to 78 sometimes, due to the fluctuation of the demand for coal, the differences between period demand for coal. Roughly about 80 and

20 per cent.

"Q When the companies, say the little companies in upper east Tennessee coalfield would sign the contract, the men in the mines would pay their dues to the union? I mean, generally?

"A Where?"

MR. ROWNTREE: Skip the next question.

"Q And the union took these funds, did it not, and accumulated these funds together with funds of

[3854] a lot of other small coal miners, company coal miners, and together with a lot of other funds that the union had and invested these funds in West Kentucky Coal Company in the latter part of 1955, is that not correct?

"A No, I think that is entirely an assumption that is erroneous, because the organization had funds available for investment at that period that didn't necessarily come from these small mines that you allude to.

"Q These funds would go into the treasury of the union?

"A They went into the common treasury of the union, yes, for the purposes held there in trust, for the purposes defined in the objectives of the organization and the constitutional privileges and obligations imposed on the officers.

"Q And the investment funds that were invested in West Kentucky Coal Company and the Nashville Coal Company came from the general treasury funds of the union?

"A The general funds of the United Mine Workers that they had been able to build up through years of economy and careful management of trusts. No distinction between those funds after it had become the common property of all members.

"Q From time to time the International Union imposed special assessments on the men, the
[3855] members of the union, including the members in the small mines?

"A Only after negotiation of substantial wages advances and the expenditure of larger than normal amounts of money in accomplishing that objective. Those assessments were modest in comparison with the amount of benefit the men were getting from the wage advances.

"Q These special assessment funds were likewise put into the general treasury of the United Mine Workers?

"A Went into the general treasury and became the common property of all the members of the United Mine Workers of America in the United States and Canada.

"Q And were used for investment purposes from time to time?

"A There was an obligation upon the trustees of the union to invest its funds prudently, secure what additional income was possible from their investment, the same obligation that rests upon all trustees acting in a fiduciary capacity.

"Q And these funds were invested in such companies as West Kentucky Coal Company and Nashville Coal Company?

"A They were invested because we thought it would be in the interest of all the members of the United Mine Workers of America to so invest, and we had no other principles and no other obligations except to use our judgment.

[3856] "Now fiduciary agents sometimes exercise bad judgment. The membership always has to take a chance in any interest, corporation or fund, no matter what it is. Have to assume a certain hazard

that their trustees will act with efficiency and intelligently. We have tried to do so.

* * *

[3861] "Q Would you not concede that the TVA market is a greatly depressed market with respect to price?

"A No, only as the area is affected by local wages and the people's buying power is restricted by those low wages. That is all, and that is true in any section of the country where those conditions prevail.

"Q Well, what companies have gotten the big coal contracts with the TVA?

"A I only have knowledge of those things [3862] by reading about the allotments.

"Q They are not—

"A Peabody Coal Company, I understand, has far more tonnage scheduled and contracted for future delivery than anybody else in west Kentucky. What their terms are, I don't know; what their prices and bids are, I don't know; how many tons a year they are going to deliver, I don't know; but it is reported that it is for a long period of time, and that they have dedicated reserves.

"Q And in west Kentucky—

"A To deliver that coal.

"Q And West Kentucky Coal Company is the other company that is getting the big contracts, isn't that true?

"A Sir?

"Q And West Kentucky Coal Company is the other company that is getting the big contracts?

"A Oh, undoubtedly. What proportion of the contracts they have, I do not know.

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[End of Volume II]